

June 12, 2007



**TRANSCRIPT**  
**June 12, 2007**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Councilmember Marilyn Praisner, President	Councilmember Michael Knapp, Vice-President
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	



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1 Council President Praisner,

2 Good morning ladies and gentlemen. Welcome to the Tuesday, June 12th meeting of  
3 the Montgomery County Council. Could you rise and may we all remember former  
4 congressman, Gilbert Gude, who was not only an outstanding legislator, but a  
5 gentleman in every way. We have a presentation this morning to the George Bb  
6 Thomas learning academy on the occasion of their receiving the 2007 community  
7 excellence for minority award. Councilmember Knapp.

8  
9 Councilmember Knapp,

10 Thank you. I would like to invite all of the various members of the Thomas learning  
11 academy to come up. And as they're doing that to make a couple brief remarks. We've  
12 just concluded our budget deliberation for the year. And as is typical in Montgomery  
13 County, We recognize that education is first and foremost in the minds of our  
14 constituents and our budget reflected that over 50 percent of our budget went to  
15 education in MCPS and in Montgomery College and various other programs and  
16 activities. And it's more than for us to recognize that education is not just something that  
17 happens formally in the school but we have a number of organizations through the  
18 County that are committed and engaged in educational activities through the Year. And  
19 the George B. Thomas senior learning academy is one of those examples. And we're  
20 honored to today to have the privilege to is present the 2007 achievement reward.

21  
22 Councilmember Knapp,

23 By the state and so it's very important I think and very exciting to continue to recognize  
24 education, the role it plays in our community and more importantly that the leadership  
25 that is shown throughout our community and having educational opportunities occur  
26 everywhere. And so I have a proclamation. Actually before I do the proclamation, let's  
27 just do a little introduction as to who you all are first. Alright.

28  
29 Johnny Harris,

30 Johnny Harris, --.

31  
32 Cynthia Rattley,

33 Cynthia Rattley, I'm the Director of Program --.

34  
35 Michael Thomas,

36 Michael Thomas, Executive Director.

37  
38 George Thomas,

39 George Thomas, President.

40  
41 Unidentified

42 -- Thomas, Executive Secretary .

43  
44 Frances Henry,



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1 Frances Henry --.

2  
3 Arthur Eubanks,  
4 Arthur Eubanks, former President.

5  
6 Gerry Johnson,  
7 Gerry Johnson -- Director.

8  
9 Councilmember Knapp,

10 Thank you all for coming today. Proclamation. Whereas the George B. Thomas, Sr.  
11 Learning Academy is a nonprofit organization whose mission is to close the minority  
12 achievement gap by accelerating Montgomery County student mastery of academics,  
13 specifically reading, language arts and mathematics; And whereas a centerpiece of the  
14 Learning Academy's program is a Saturday school where certified teachers and  
15 volunteer tutors work throughout the school year with Montgomery County students on  
16 core academic subjects and teach successful learning skills; And whereas the Saturday  
17 school program was established in 1986 as the only Saturday school with one site, 21  
18 students and 19 volunteer tutors and now serves more than 3,000 students each year at  
19 12 sites with a ratio of one certified teacher for every 14 students; And whereas the  
20 Saturday school program is available to all Montgomery County first through 12th grade  
21 students for year-round tutoring; And whereas the Maryland Department of Education  
22 presented the George B. Thomas, Sr. Learning Academy with the 2007 Community  
23 Excellence for Minority Achievement Award which recognizes outstanding contributions  
24 to advance achievement among minority, economically disadvantaged and disabled  
25 students. Now therefore be it resolved the Montgomery County Council joins the  
26 community in congratulating the George B. Thomas, Sr. Learning Academy for being  
27 awarded the 2007 Community Excellence for Minority Achievement Award presented on  
28 this 12th day of June in the year 2007, Marilyn Praisner Council President. (applause).

29  
30 George Thomas,

31 Thank you so very much Councilman Knapp and Councilmembers. I am very thrilled  
32 and moved to receive this proclamation and on behalf of our board of directors, our  
33 staff, parents and students, we know that this would not be possible without the very  
34 generous support we have received from the Montgomery County government now for  
35 several years. We believe we do make a difference. We are in the business of tutoring  
36 and mentoring students. Our business is to enhance academic achievement of students  
37 in their regular school program to raise to a higher level of self-esteem. We believe we  
38 do that. Our motto in fact is I believe in me. So we not only serve as academic  
39 enhancers, we also serve as mentors for these students. And we believe we have  
40 evidence to show that we are making a difference. We are glad of the fact that we've  
41 been able to serve thousands of students now for the past 20 years. We are very  
42 rigorously planning right now, launching our 21st year in the fall for the school year  
43 FY08. Additionally I just want to say that we are also pleased to continue to receive a  
44 report -- support for our efforts as we continue to expand the Learning Academy. As I



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1 speak, we are working collaboratively with the Recreation Department to provide  
2 extended day after school programs in two high schools. We're piloting those programs  
3 at Paint Branch and Springbrook High Schools as we speak. And we have every  
4 intention to present evidence to you to show that we do indeed merit your support. One  
5 of the things that I personally feel very strongly about is that we must get ahead of the  
6 curve of preparing students for a very big challenge in 2009 when students will be  
7 required to pass the high school assessment tests in order to receive a diploma in this  
8 County. We believe that, not only the County but the state. We believe that preparation  
9 ahead of that time will help us to make this achievement. So thank you very much.

10  
11 Council President Praisner,  
12 (applause). (Multiple voices). Thank you all very much and congratulations again. It's  
13 nice to see the recognition for our Montgomery County grown program. Thank you  
14 George.

15  
16 George Thomas,  
17 Thank you.

18  
19 Council President Praisner,  
20 Announcements and calendar, agenda and calendar changes, Madam Clerk.

21  
22 Linda Lauer,  
23 No agenda changes to announce. We did have a couple of petitions this week. We had  
24 one from residents supporting funding for Long Branch Athletic Association and one  
25 supporting restoration of the \$690,000 in tax duplication funding.

26  
27 Council President Praisner,  
28 Thank you.

29  
30 Linda Lauer,  
31 Thank you.

32  
33 Council President Praisner,  
34 Madam Clerk, I believe there are no minutes?

35  
36 Council Clerk,  
37 No minutes. Correct.

38  
39 Council President Praisner,  
40 Okay. Then we have the Consent Calendar before us. Is there a motion?

41  
42 Councilmember Knapp,  
43 So moved.



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1 Council President Praisner,  
2 Vice-President Knapp, is there a second? Councilmember Andrews? Councilmember  
3 Trachtenberg, is there an item you wanted to comment on?

4  
5 Councilmember Trachtenberg,  
6 Yeah, I actually wanted to make some brief comments and make a motion relating to  
7 item number C which is the Pedestrian Safety Advisory Committee. Yesterday  
8 afternoon I had provided a memorandum to colleagues suggesting that since a key part  
9 of the Committee's mandate relates to advice provided to us around pedestrian bicycle  
10 safety and access that I thought it would be prudent to add a little bit of language to the  
11 legislation which would include naming a representative from the bicycle advocacy  
12 community onto the Committee. And that would be my formal motion.

13  
14 Councilmember Floreen,  
15 And that would be my second.

16  
17 Council President Praisner,  
18 Well, that's fine, but I would make one recommendation then. I would reduce the  
19 number of representatives at large to eight.

20  
21 Councilmember Trachtenberg,  
22 Okay.

23  
24 Council President Praisner,  
25 And add a representative from the bicycling community. Otherwise we go to an even  
26 number and increase the size.

27  
28 Councilmember Trachtenberg,  
29 Okay.

30  
31 Council President Praisner,  
32 Is there any objection to that modification?

33  
34 Councilmember Trachtenberg,  
35 No.

36  
37 Council President Praisner,  
38 Without objection then the resolution will be so modified. And we can act on that with  
39 that modification next week.

40  
41 Councilmember Trachtenberg,  
42 Okay.

43  
44 Council President Praisner,



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1 Anything else for the Consent Calendar? I wanted to make one comment and that's on  
2 the Ten-Year Comprehensive Water Supply and Sewage Systems Plan related, that's  
3 item B, the Child Lots. I'm going to have more comments to make when we talk about  
4 the rest of the issues related to the Ad Hoc Committee on Agricultural Reserve that this  
5 is a piece of. But I just want to note that that is one of the items that we will discuss a  
6 little more broadly later is a outgrowth of those taskforce's recommendations.  
7 Councilmember Leventhal?

8  
9 Councilmember Leventhal,  
10 Thank you Madam President. I will also defer substantive discussion of the Ag Policy  
11 Working Group recommendations and the alternatives proposed by the Planning Board.  
12 But I wonder if Madam President, you could help us understand the timing and also,  
13 because I have read the excellent memo by Marlene Michaels and Jeff Zyontz, Amanda  
14 Mihill and Shondell Foster, but I'm, with respect to some of the, some issues we're  
15 getting later, some issues are --.

16  
17 Council President Praisner,  
18 Sure. Can we do that when we do the, rather than the Consent Calendar--.

19  
20 Councilmember Leventhal,  
21 Yes.

22  
23 Council President Praisner,  
24 When we start to do the other items?

25  
26 Councilmember Leventhal,  
27 Whatever is the appropriate time.

28  
29 Council President Praisner,  
30 I think it's a little easier.

31  
32 Councilmember Leventhal,  
33 Yes.

34  
35 Council President Praisner,  
36 Because we'll be talking about them and I can make reference to that.

37  
38 Councilmember Leventhal,  
39 Just on timing would be helpful?

40  
41 Council President Praisner,  
42 Sure.

43  
44 Councilmember Leventhal,



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1 Thank you.

2  
3 Council President Praisner,  
4 Schedule and timing is exactly what I wanted to talk about.

5  
6 Councilmember Leventhal,  
7 Thank you very much.

8  
9 Council President Praisner,  
10 Thank you. Since there are no other lights, all in favor of adopting the Consent  
11 Calendar, please indicate by raising your hand. That is unanimous. Thank you all very  
12 much. We'll now move to Legislative Session. There is no legislative journal, correct?

13  
14 Council Clerk,  
15 That's correct.

16  
17 Council President Praisner,  
18 We have introduction of one bill, Bill 12-07, Real Property Agricultural Zones Disclosure  
19 sponsored by the Council President at the request of the Ad Hoc Agricultural  
20 Workgroup, Policy Working Group. In addition, there are draft regulations that are  
21 incorporated within this. These regulations have not been completed as far as their  
22 process, but we wanted to introduce them to make sure that folks understand what they  
23 can also comment on as we go through the process. And now would be I think an  
24 appropriate time for us to talk about what we're doing today. Let me comment as well  
25 that the Public Hearing for Bill 12-07 as well as for the other items that we're introducing  
26 today, the Public Hearing is scheduled for July 19th at 7:30 p.m. We had the benefit as  
27 a Council, of thanks to then Council President Leventhal who recommended and  
28 worked through the process of helping the Council appoint a Ad Hoc Committee to look  
29 at agricultural policy in a comprehensive way. We had the benefit of hearing from the  
30 taskforce before the full Council. My pitchfork isn't here anymore but it can come back  
31 out again at any time. A symbolic pitchfork I should say. It worked during the budget. In  
32 any case we had the benefit of the excellent work of the taskforce. And the Council had  
33 a chance to hear from the group. We also had a chance to have the PHED Committee  
34 have some conversation about the work. We asked our staff to prepare whatever  
35 documents are necessary to implement the recommendations taking no automatic  
36 assumptions about what the Council's action might be. But recognizing that one of the  
37 challenges in the past had been that recommendations may have floated out there  
38 somewhere but never been fully vetted through Council and public for action. We  
39 wanted to do this in a comprehensive way. Staff took the recommendations and  
40 identified them on a 3-phase time frame. There are items that can be done on a short-  
41 term basis meaning that the timeframe to review them is relatively abbreviated and can  
42 be dealt with almost immediately. There are items that had a medium nature to them.  
43 They would require a little more work. And then there are some items that are more long  
44 term. There are also things that are basically ongoing from a standpoint of promoting



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1 agriculture et cetera that take no necessarily final action by a Council to implement.  
2 They are not legislative. They are more policy direction and perhaps budgetary but don't  
3 require any final action. The staff has taken, and what we have in front of us today are  
4 the initial recommendations and those items that would allow the Council to begin the  
5 action of implementing or at least considering to implement the recommendations.  
6 They're in the process of doing so, we have received from the Planning Board their  
7 comments. And we will be introducing today in the District Council session, the Planning  
8 Board's recommendations as it relates to one of the items that we are dealing with in the  
9 short term, meaning the Child Lot issue. And the Planning Board had a different  
10 perspective than the taskforce's recommendations. They could have submitted them as  
11 amendments or modifications. They chose to submit them as a separate proposal. I've  
12 introduced it as Council President on behalf of the Planning Board just as the  
13 recommendations of the Working Group are introduced by Council President on behalf  
14 of or for the Working Group. It is my assumption working with our staff, that we will have  
15 the Public Hearing as I indicated on the 19th for all of these recommendations,  
16 encouraging folks to the extent they want to, to also comment on the reg or any of the  
17 other items that are in that short-term immediate basis. We have already received other  
18 comments from the Planning Board and others as it relates to items that are not in the  
19 short term but are likely to be dealt with by this Council in this year but not until after,  
20 work still needed to be done to present them to us. The most probably controversial of  
21 those being the sand mound issues. I anticipate that the Council will deal with that issue  
22 sometime in the late fall. And that would be the time period in which we will look at the  
23 second phase. The actions after the Public Hearing would be to take them to the PHED  
24 Committee for the PHED Committee's consideration. How quickly we move them to  
25 Council depends upon the deliberations and also the input of folks. Some of those may  
26 cross with the second phase. But we will begin to hopefully have comments and  
27 reactions, not just from the taskforce, but also from the general public and hopefully  
28 from the County Executive as well as Planning Board and others. So that's what I had in  
29 mind George. Does that answer the question? Do you have any further questions or  
30 comments, George?

31 Councilmember Leventhal,

32 Well, I'll look forward to the Public Hearing. I think what I know about the work of the Ad  
33 Hoc Agricultural Policy Working Group is that all parties, even though there were  
34 differences of opinion on issues having to do with TDRs and BLTs and zoning and  
35 accessory structures and housing for you know, members of farm families, that  
36 everyone was, well almost everyone, was willing to give up something that they wanted  
37 because they believe that the larger product was important and that everyone won  
38 something and everyone gave up something. And so what I'll be interested in getting a  
39 sense of during the Public Hearing, and I know that in the audience today are some  
40 interested parties, is, and I do understand that these are complex issues that staff is  
41 getting to us, those items that it can get to us promptly and that other issues it couldn't  
42 get to us promptly. But what I want to understand is the interrelationship of the issues  
43 and how if we act in two --, whether that hurts our ability to achieve a really useful  
44





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1 overall settlement of a lot of very complicated and interrelated issues. So I make no  
2 judgment at this time but I'm interested in hearing from the community as to whether the  
3 set of issues that we're taking up first in part because staff could get it to us promptly, is  
4 related to those issues which the Council President has said we will need to take up  
5 later in the year and whether instead we might consider, and I'm not suggesting this, I  
6 just want to understand whether it may make more sense to deal with them all at one  
7 time. But I do understand the timing is sensitive on some of these.

8  
9 Council President Praisner,

10 Well, actually, let me just respond to that because I have not yet made a decision as to  
11 when the Council would act on all of them. We may work on them and hold them to deal  
12 with this collectively rather bringing them for final Council action. My inclination is to do  
13 exactly what I just said, have some work through some of these. Some may be so non-  
14 controversial and not interrelated that we can deal with them almost immediately. But  
15 there may be others, like the issue of notice to folks when you buy property et cetera,  
16 that may be.

17  
18 Councilmember Leventhal,  
19 Right.

20  
21 Council President Praisner,  
22 Important but minor in the relationship of controversy.

23  
24 Councilmember Leventhal,  
25 Right.

26  
27 Council President Praisner,  
28 There may be others that are both short and mid that really need to be packaged  
29 together. And my initial view was, and that's why I said the timing of the final action may  
30 be more related to a bigger package.

31  
32 Councilmember Leventhal,  
33 Right.

34  
35 Council President Praisner,  
36 But we're trying to work through these. And some of them required more staff work and I  
37 wanted, and I think staff felt that it would be easier to start to bite some of this and chew  
38 it and the other point we wanted to demonstrate as we said to the Working Group, that  
39 we were going to move as quickly as we could to deal with all of the issues. So that's  
40 my general sense. I want to try under my watch to at least finish as much as we can.  
41 But know that there are some that are interrelated that are mid and short but probably  
42 need to go together.

43  
44 Councilmember Leventhal,



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1 Good. Well, I sense that the Council President understands the interrelationship that I'm  
2 talking about, so I appreciate your responsiveness. Two other quick points related to  
3 these issues. First, I'm going to defer from cosponsoring these initiatives at this time. My  
4 inclination was while these are great ideas, let's put my name on them, but clearly it's a  
5 procedural thing the Council President is doing and at the request of the Working Group  
6 the Council President speaks for all of us, so, on several of these proposals. As you  
7 say, the non-controversial suggestion that before someone buys a home in an  
8 agricultural area that there be disclosure that there might be, you know, odors and pigs  
9 and farm equipment and that kind of thing --.

10  
11 Council President Praisner,  
12 Oh my.

13  
14 Councilmember Leventhal,  
15 You know that that's a, that we would also put that. So my deferring to, declining to  
16 cosponsor at this time does not, you know, indicate that it's obviously on its face a good  
17 idea if we want to support agriculture in perpetuity. The second point I want to make is a  
18 little bit tangential if the Council President will indulge me.

19  
20 Council President Praisner,  
21 Sure.

22  
23 Councilmember Leventhal,  
24 One of the first pieces of legislation that this Council passed was a resolution calling on  
25 our Department of Public Works and Transportation to put up signs at the entrances to  
26 the Ag Reserve. We had discussion of this in the budget. We recently got a memo from  
27 the department that says that the State Highway Administration is unfriendly to this  
28 suggestion. And I just wanted to ask the Council President if perhaps the Council could  
29 communicate with State Highway and with our legislative delegation indicating that it  
30 really is the intent of the Council that this go forward and that we would hope that on  
31 roads like Route 270, for example, that the State Highway Administration would respect  
32 the Council's interest in this proposal. I was disappointed to see that the early reaction  
33 from the State Highway Administration was negative.

34  
35 Council President Praisner,  
36 I intended to do that anyway. So I'm happy to follow through. I actually was a little  
37 concerned. We had not received direct communication from State Highway. It's been  
38 indirect and I'm not questioning the response that the department got. But we may be in  
39 the mode of perhaps needing to negotiate something rather than to say outright, no.  
40 Maybe there's some compromise or suggestion. And I'm not sure I fully understand why  
41 if you can have some kind of sign pointing to a historic area or some property of ours  
42 that is on the, near the right-of-way you can do those kinds of things. But I'm already in  
43 negotiation with State Highway on signs on the east side of the County. So I'm happy to  
44 pursue that and I intended to so that's fine George.



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Councilmember Leventhal,  
Thank you very much.

Council President Praisner,  
Vice-President Knapp.

Councilmember Knapp,  
Thank you Madam President and I appreciate the dialogue that just place because I appreciate both Mr. Leventhal in his tenure as Council President really bringing this Ad Hoc Working Group together to address exactly what you just raised and the interconnectiveness of so many of these issues and making sure that they can all be considered at the same time and I appreciate the Council, the current Council President, Ms. Praisner's recognition of that and really try to make sure that as we move forward from a policy perspective that we do this in a collective way to really best serve the needs of the Ag Reserve and agricultural community in perpetuity. And I think that, because I think that's very important. I also just wanted to thank our staff because I know that you've been working like crazy all these pieces put together and to recognize the folks that we have here in the audience today because everybody who is advocating for and about the Ag Reserve already has a full-time job. They're generally working in the agricultural community and for them to take time to be here to make sure that we know the positions of the folks who live in the Ag Reserve means they're taking time away from the activities that they get paid to do. And so I appreciate their willingness to take that time and I think it shows a commitment to the lifestyle of agriculture in our community and the need to continue to advance that for the generations to come. To that end, I was a little troubled that the Planning Board felt compelled to send over the legislation that it did only because there was so much effort that was put forth on the part of all various perspectives to kind of, in the Working Group to reach the consensus I think that it did. And on that Working Group were members of the Planning Board, it was staffed by Planning Board staff in addition to Council staff and the Planning Board took the opportunity to review all the recommendations and to provide comments to the Council. And throughout our deliberation the Planning Board would, as they usually do, had the opportunity to continue to weigh in and we would have their advice as we move forward. And so I think for the Planning Board to also send over legislation to effectively compete against what the Workgroup has put forward, which was kind of serving as the foundation for our discussion, I think to some degree kind of undermines the efforts of that Working Group and I was disappointed to see that. Because I think that it was truly an effort that showed if you get everybody to the table at the right time and you can keep people together that you can really get to a successful outcome and everyone gives a little bit and everyone takes a little bit but working collectively you can really see success. And so I thought that was very, very positive. And so I was a little disappointed to see what the Planning Board sent over because I think it undermines and I think to some degree disrespects that effort. And so I appreciate the Council President's procedure element to really introduce that because that's what we have to do as it



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1 comes over. But I would urge my colleagues as we continue to move forward to really  
2 work from the baseline that the community and the Ag Policy Workgroup put together  
3 and let that be our discussion point and add to that as we see fit as the Council.  
4 Because I think that is really the, where the community came together to give us the  
5 right policy guidance and that doesn't mean we're going to agree 100% with what's  
6 been put forward but I think that really provides the basis for which our discussion  
7 should occur. And so I thank everyone's efforts so far.

8  
9 Council President Praisner,  
10 Councilmember Floreen.

11  
12 Councilmember Floreen,  
13 Thank you Madam President. Well, I agree with both George and Mike on the Ad Hoc  
14 Ag Committee report and recommendations. I actually think it's a bit insulting both to the  
15 Ad Hoc Committee and to this Council to advance a separate piece of legislation that  
16 was not, was not the product of the group that we created as a result of the inconsistent  
17 and irregular material we were getting from the Planning Board previously. That forced  
18 us and Council President Leventhal at the time to say stop, we're going to send this out  
19 to a group to work through and reach some compromise on these issues and to bring  
20 some recommendations forward to us so that we can roll it into a new package. And so  
21 given that history I will just let our new colleagues know we were getting periodic pieces  
22 of legislation on this with a lot of dissatisfaction from the community because they didn't  
23 feel included in their concerns and did not feel were addressed which was the rationale  
24 for sending this to a group with people from all sides and staff to hash this all out. And  
25 because of that, I think it's incumbent upon us Madam President to look at this in a  
26 package and it may be easier for the staff to pick out the easier parts than for the  
27 Council to do that. But for the community members to follow this, they can't keep  
28 coming. We do need to put this to rest one way or the other on these issues and look at  
29 it in a package. So I do ask that we take up the whole schmiel at once, at least in term  
30 of our decision making and hopefully in terms of any committee work because we have  
31 demanded a lot from the Agricultural Committee in terms of their ability just to follow  
32 what we're doing. It's hard enough for us. It's almost impossible for the public to keep  
33 track of how many different pieces of legislation we have in front of us. So I would ask,  
34 second George's comments on this, that we look at this in a coordinated way and try to  
35 make a commitment to the community that is interested in this, that we try to use their  
36 time responsibly and in a coordinated fashion so they can do their work in the fields,  
37 they can do their work as representatives of the agricultural community and give it the  
38 time it deserves. We have just stretched this out now for how many years? Several  
39 years. And we need to conclude it. But I think we need to do it all at once so people  
40 don't have to keep coming back for another work session here at the Council. I think it's  
41 just too much to ask of the community. The staff is there. We are blessed with  
42 tremendous resources here at our disposal. The community though is on its own more  
43 and I think we want to be careful of what more we demand from them. We've had the  
44 package, we've had it for a while, now we've got the details. And I know we're going to



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1 be busy this summer. But I would hope that as we get to it this fall, we will do it in a  
2 focused way. Because it's just too much for everybody to keep tracking over and over  
3 and over again. And that's what it's going to become if we're not careful. So I know  
4 that's everyone's intention and I hope to see it handled that way. And this is the product  
5 of so many compromises that came out of this group. I think that that fundamental  
6 element of this needs to be respected above all. Everyone was at that table and  
7 everybody gave up something. And I think that's something that will be, certainly will be  
8 a driving rationale for me as I work through this with my colleagues here.

9  
10 Council President Praisner,

11 Well, I certainly will try to avoid repetition. Councilmember Leventhal.

12  
13 Councilmember Leventhal,

14 I'm going to try to avoid repetition as well. And I, because Mr. Knapp has put it on the  
15 table for discussion this morning and I'm going to join him in expressing some real  
16 unhappiness with the way in which the Planning Board has addressed this basket of  
17 issues. And let me just be very clear that I vividly recall the revision that this Council  
18 adopted to ZTA procedures earlier this year and actually the provision that I'm about to  
19 reference was existing prior in ZTA procedures. The Council President must introduce  
20 ZTAs at the request of the Planning Board. So in no way do I suggest that the Council  
21 President has disrespected the work of the Ag Policy Working Group. In fact, to the  
22 contrary, I'm very appreciative of her responsiveness to my point and Mr. Knapp and  
23 Ms. Floreen's point and I welcome the dialogue that she and I and all Councilmembers  
24 will have about how to connect the dots on all of these complicated issues and how they  
25 are related to each other. Unfortunately the Planning Board did not give us a  
26 coordinated set of recommendations. The Planning Board did not give us a forward  
27 reaching, far, looking far ahead approach to maintaining agricultural vitality in this very  
28 important third of the County. And so in the absence of action from the Planning Board  
29 we appointed, as my colleagues have said, this balanced group of stakeholders who  
30 have a lifetime commitment to agriculture and then having received that the Planning  
31 Board instead saw fit to sort of pick it apart and address individual pieces of it rather  
32 than the whole. So I share Mr. Knapp's unhappiness with that approach. I think it is not  
33 respectful of the work of community members who have devoted their lives to  
34 agriculture and agriculture is exactly what we're trying to promote.

35  
36 Council President Praisner,

37 Okay. I see no further lights. As I said, the Public Hearing is scheduled for July 19th and  
38 I would urge folks to look at the multiple items that are before us rather just the  
39 individual items. The other comment I have or request that I have is there are some  
40 actions suggested in the -- that are not action items, per se. Including information on the  
41 status of TDR's, et cetera. Can you please convey to the Planning Board that we would  
42 like to know what the status of the documentation on TDR's is in relationship to both an  
43 ongoing process for documenting and also the status of it? Thank you. We will now  
44 move to miscellaneous business. There is a resol – motion needed for a Resolution to



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1 extend the expiration date of Bill 43-05, Weapons Restrictions-Deer Management until  
2 December 13th 2008. Is there a motion? Vice-President Knapp?

3  
4 Councilmember Knapp,  
5 So moved.

6  
7 Council President Praisner,  
8 Now is there a second? Councilmember Trachtenberg. All in favor of the resolution?  
9 That is unanimous. Thank you. We now move into District Council Session and we have  
10 consideration of the Hearing Examiner's Report and Recommendation Application G-  
11 859. Welcome Madam Hearing Examiner.

12  
13 Francoise Carrie,  
14 Thank you very much.

15  
16 Council President Praisner,  
17 How are you? Are there any comments you would like to make before we consider this  
18 item?

19  
20 Francoise Carrie,  
21 No, I think it's a fairly straightforward case. The recommendations of approval from the  
22 staff and the Planning Board and myself. There was no community opposition, there  
23 was only support from the immediate neighbors and it is on all squares with the master  
24 plan recommendation.

25  
26 Council President Praisner,  
27 Okay. Councilmember Berliner.

28  
29 Councilmember Berliner,  
30 I appreciate your quick summary with respect to that because the things that are so  
31 important to many of us is that A, it's consistent with the master plan which you  
32 observed it is. B, there is no community opposition. C, it was a 5-0 vote in the Planning  
33 Board. And that it actually looks from the drawings that this is going to enhance the  
34 quality of that community, that the architectural design itself is a good example of  
35 blending into a community as opposed to having some jarring building and, and as well  
36 as I appreciate it, that the owner or the architect has agreed to preserve a tree  
37 voluntarily that is a significant tree and of importance to the community. So on every  
38 level this appears, unless I'm missing something, to be a net plus.

39  
40 Francoise Carrie,  
41 That is certainly my impression.

42  
43 Councilmember Berliner,  
44 Thank you.



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1  
2 Council President Praisner,  
3 Okay. Is there any motion on this item? Councilmember Berliner.  
4  
5 Councilmember Berliner,  
6 I'll move to accept the recommendation.  
7  
8 Council President Praisner,  
9 Is there a second?  
10  
11 Councilmember Knapp,  
12 Second.  
13  
14 Council President Praisner,  
15 Council Vice-President Knapp. There are no other lights so Madam Clerk please call the  
16 role.  
17  
18 Council Clerk,  
19 Ms. Ervin.  
20  
21 Councilmember Ervin,  
22 Yes.  
23  
24 Council Clerk,  
25 Mr. Elrich.  
26  
27 Councilmember Elrich,  
28 Yes.  
29  
30 Council Clerk,  
31 Ms. Floreen.  
32  
33 Councilmember Floreen,  
34 Yes.  
35  
36 Council Clerk,  
37 Ms. Trachtenberg.  
38  
39 Councilmember Trachtenberg,  
40 Yes.  
41  
42 Council Clerk,  
43 Mr. Leventhal.  
44



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1 Councilmember Leventhal,  
2 Yes.

3  
4 Council Clerk,  
5 Mr. Andrews.

6  
7 Councilmember Andrews,  
8 Yes.

9  
10 Council Clerk,  
11 Mr. Berliner.

12  
13 Councilmember Berliner,  
14 Yes.

15  
16 Council Clerk,  
17 Mr. Knapp.

18  
19 Councilmember Knapp,  
20 Yes.

21  
22 Council Clerk,  
23 Ms. Praisner.

24  
25 Council President Praisner,  
26 Yes. The Hearing Examiner's Report for approval is accepted 9-0. Thank you all. We  
27 will now move to the introduction of a series of Zoning Text Amendments. Let me  
28 comment on each of them as well as the subdivision reg. These are the other pieces of  
29 the requests, or recommendations coming from the Ad Hoc Agricultural Policy Working  
30 Group. Zoning Text Amendment 07-06, Rural Density Transfer-Child Lot Standards.  
31 Zoning Text Amendment 07-07, Rural Density Transfer-Use Limitations. Zoning Text  
32 Amendment 07-08, Transferable Development Rights- Use Standards. Zoning Text  
33 Amendment 07-09, Rural Density Transfer-Child Lot Standards is the item sponsored  
34 by the Council President at the request of the Planning Board. And Subdivision  
35 Regulation Amendment 07-02, Transferable Development Rights-Subdivision  
36 Standards which is the final one that comes out of the Ad Hoc Agricultural Policy  
37 Working Group. The Public Hearing for each of these items is scheduled for July 19th at  
38 7:30 p.m. I would entertain one motion to introduce and adopt all of the resolutions. Is  
39 there a motion? Councilmember Trachtenberg. Is there a second?

40  
41 Councilmember Knapp,  
42 Second.

43  
44 Council President Praisner,





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1 Vice-President Knapp. All in favor? That is unanimous. Councilmember Elrich you  
2 voted?  
3  
4 Councilmember Elrich,  
5 Yes.  
6  
7 Council President Praisner,  
8 And that is unanimous. Each of these item items is, yeah, like your tie Councilmember  
9 Elrich. (laughter). No, it was the weight of the tie that couldn't pull your hand up fast  
10 enough. (laughter). All of those items have been introduced. The Public Hearing is set.  
11 The Council will now move to the sixth floor conference room to complete our interviews  
12 for the Planning Board appointments. We will be in recess at 12:15 for the Public Safety  
13 Committee to meet in the sixth floor and back here at 1:30 for our Public Hearings.  
14 Thank you.

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1 President Praisner,

2 Good afternoon, ladies and gentlemen. This is a public hearing on Zoning Text  
3 Amendment 07-04, which would amend the zoning ordinance to establish setbacks for  
4 accessory structures from national historical park property, and generally amend the  
5 provisions for accessory structures and single-family residential and agricultural zones.  
6 Persons wishing to submit additional material for the Council's consideration should do  
7 so before the close of business on June 13. The PHED committee worksession is  
8 tentatively scheduled for June 18, at 2:00 p.m. Please call (240) 777-7900 to confirm.  
9 Before presenting your presentation please state your name and address clearly for the  
10 record and spell any unusual names. We have several speakers for this hearing. The  
11 first speaker -- and I'll call all five up at the same time -- is Greg Russ for the Planning  
12 Board, who will also speak on Agenda Item 12; Kevin Brandt, C&O Canal National  
13 Historical Park, if you would come forward if you are here. Pearl Marks speaking on her  
14 own behalf. Anne Merwin for Potomac Conservancy, and Aris Mardirossian speaking on  
15 his own behalf. If all of those individuals, if they're here, would please come forward  
16 how. Mr. Russ, you're first.

17  
18 Mr. Russ,

19 Thank you, President Praisner. For the record, Greg Russ from the Montgomery County  
20 Planning Board. The Planning Board reviewed only Text Amendment number 07-04 at  
21 its regular meeting on May 24, 2007. The Board supports the legislative objective of  
22 establishing setbacks for accessory structures in the large lot and agricultural zones  
23 from national historical park property for the purpose of protecting scenic vistas.  
24 However it is the Board's position that the view shared of the C&O Canal National  
25 Historic Park is best protected by a setback restriction for all properties along the canal  
26 corridor and not just for the large lot residential zones and the agricultural zones. The  
27 Board did not support staff's recommendation for a grandfather provision that would  
28 allow the replacement of any accessory structure located within the proposed view  
29 shared setback. The Board believes that allowing existing structures located within the  
30 view shared restriction line to be replaced with undermine important scenic objectives.  
31 The Board is particularly concerned with the proposed replacement of the term  
32 "accessory use" with the term "accessory structure." The term "accessory use" is a  
33 defined term and it is therefore distinguished from "accessory structure" or building.  
34 Elimination of the term would have significant unintended consequences throughout the  
35 zoning ordinance. A more all-inclusive solution would be to add the word "structure"  
36 without eliminating the word "use." I will also, as you mentioned, be speaking on behalf



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1 of ZTA 07-05. The Planning Board will be actually hearing this case on this coming  
2 Thursday. I am speaking on behalf of the staff. The staff is actually transmitting  
3 comments here as follows: a process needs to be established that will allow minor  
4 changes to the site plan to be made without the Planning Board's approval because the  
5 current system is burdensome to staff, applicants and the public. As such, staff agrees  
6 with this objective of Zoning Text Amendment number 07-05. Staff however has a  
7 number of concerns with the ZTA in its current form. Many of these concerns rise from  
8 the lack of clarity as to the intent of the modifications proposed by the text amendment.  
9 In addition, staff would like to propose some additional modifications to the current law.  
10 As for the new section in the proposed text amendment 59D-3.0.1.1, which deals with  
11 permits and changes exempt from conforming to an approved site plan. This section  
12 authorizes DPS to issue sediment control permits or building permits even if they are  
13 not in conformance with an approved site plan for any of the reasons as stated in the  
14 legislation. There is nothing in the legislation to imply that the planning department  
15 would be notified of these changes. Moreover, each of these items is also subject to  
16 broad interpretation. The section D is proposed for Section 59D3.7 amendment of site  
17 plan to reflect certain circumstances where the planning director would approve site  
18 plan amendments. Staff strongly believes that allowing the planning director to approve  
19 certain modifications to a site plan is imperative to accommodate site constraints and to  
20 facilitate smaller changes requested by developers, builders, homeowner associations  
21 and government agencies. Although this is difficult to define those elements or features  
22 of a plan that are acceptable for approval at the administrative level, the language used  
23 in the ZTA is acceptable except for several modifications that are listed in the staff  
24 report. And finally, staff would like to see this text amendment address a number of  
25 other issues related to maintenance. For example, it would be helpful if wording would  
26 be added to the ZTA that would define what is included in the concept of maintenance,  
27 and makes it clear that maintenance items do not need Park and Planning approval.  
28 Alternatively, the ZTA could include the provisions that allow administrative approval to  
29 be granted for maintenance. Secondly, adding information related to clarify where the  
30 site plans need to be amended when DPS or DPWT propose modifications to site plan  
31 features, which are located in rights of way that they control. And thirdly, to clarify  
32 whether the responsibility for enforcement of certain site plan features should be  
33 extinguished at some point in time. Staff would recommend that builders be monitored  
34 to ensure that the correct landscaping and recreational facilities are provided at the time  
35 of construction of a project, but that staff would then continue to monitor these two  
36 aspects for a period of five years. I would be happy to answer any questions you may  
37 have.

38 President Praisner,

39 Thank you. Pearl Marks. Are you Pearl Marks? You need to push the button in front of  
40 you.

41  
42  
43 Ms. Marks,



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1 I am. Thank you. I am Pearl Marks. And you'll know from my shaky voice that this is not  
2 my typical venue. I'm here today as a homeowner with property adjacent to the C&O  
3 Canal National Historical Park to support Zoning Text Amendment ZTA number 07-04,  
4 but with questions regarding deer management as it pertains to this amendment. First, I  
5 believe that ownership of property next to the park is a privilege only a very few lucky  
6 people can enjoy. For that privilege of proximity we have a responsibility to fulfill the  
7 mission of the park. Many of my neighbors who have property abutting the park are also  
8 park users and desire that very special experience of being in a natural setting. The  
9 park is a local and national natural treasure and it is literally in our backyards. For hiker,  
10 runner, biker, nature watcher or fisherman, the most precious areas of the park are its  
11 most natural sections that are without the interruption of man's structural intrusions. It's  
12 a natural environment of millions of canal users seek each year for its richness and  
13 sense of peace and where we feel restored. I believe we need to protect the experience  
14 of canal users as it was intended when the park was designated as national historical  
15 park, and its protection that brings me to my second issue and concern. The increasing  
16 population of deer in the park and the adjacent land is having the most heavy and  
17 negative impact on plant and animal communities. To address this issue as it applies to  
18 diversity within the park goes beyond this amendment; however, I wonder if deer  
19 fencing -- by that I mean something very specific. It's the only kind of deer fencing I've  
20 seen. It's thin, strong plastic netting with holes that are about an inch and a half wide  
21 that are supported by one-inch metal posts that can be set up to 20 feet apart. I wonder  
22 if deer fencing on private land that cannot be seen from the tow path, and I stress  
23 cannot be seen from the tow path should be banned. Those few homeowners whom I  
24 know who have property near and away from the park have enclosed property with deer  
25 fencing in order to create a diverse landscape rather than a lawn monoculture. Deer  
26 fencing with restrictions may on balance be of a benefit. I will end to you with a quote  
27 from Justice Douglas as you ponder these issues. When perplexed with legal problems,  
28 I have for years taken the old tow path, hiked a spell, sat for a while on a bluff  
29 overlooking the river, and escaping from people, lost myself in revelry. Hiking in the  
30 solitude or just sitting in the solitude of the woods and river have some magic. Why I do  
31 not know. But exercise in the quiet of the cliffs, woods and river generate powerful  
32 subconscious forces and before I get home the seemingly insolvable problem has been  
33 solved. Thank you.

34  
35 President Praisner,  
36 Thank you. Anne Merwin.

37  
38 Ms. Merwin,  
39 I'm going to use your microphone.

40  
41 President Praisner,  
42 No, use that one please.

43  
44 Ms. Merwin,



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1 It's a little hard to look at you all from this angle.

2  
3 President Praisner,  
4 That's all right.

5  
6 Ms. Merwin,  
7 Hopefully you can hear me. My name is Anne Merwin. I'm the Director of Policy for  
8 Potomac Conservancy, 8601 Georgia Avenue, in Silver Spring. I'm here today because  
9 the mission of the Potomac Conservancy is to protect the health, beauty and enjoyment  
10 of the Potomac River and its tributaries, and I believe that the zoning text amendment  
11 does that. First I'd like to go through a couple of very specific reasons why I think the  
12 zoning text amendment is important. And then some more general reasons for the  
13 benefit of all people of Montgomery County. First of all C&O Canal National Park has  
14 tremendous historical significance. This is a canal that was originally envisioned by  
15 George Washington; was built in the early 1800's; came to the federal government's  
16 hand the early 1930's. By the early 1950's there were plans to build a freeway over the  
17 canal which were stopped by Justice Douglas in 1954 by taking decision makers in  
18 Washington luminaries hiking on the canal. The same canal that we all enjoy hiking on  
19 today. The canal became a national monument in 1961, where it is listed on the  
20 National Register of Historic Places in 1966, and became a National Historical Park in  
21 1971. This is also a park that gets the same number of visitors per year as Yellowstone;  
22 almost 3 million visitors a year on average come to the C&O Canal National Park. The  
23 majority of those are in Montgomery County. This means that thousands of Montgomery  
24 County residents are using this park as their national park in their own backyards; in  
25 addition to users from Virginia, the rest of Maryland and all over the nation. It's also  
26 important to note that the scenic and natural qualities of the C&O Canal National Park  
27 are unusually dependent on the adjacent land use. The canal itself is 185 miles long but  
28 it's really only a ribbon. It's very, very narrow. The land owned by the park service in  
29 many cases extends only a few feet beyond the canal itself. So what happens on the  
30 adjacent private parcels strongly affects the experience that every one of those 3 million  
31 users of the C&O Canal has. The vision that you get walking along the canal is not park  
32 property for the most part. What you're seeing is the back ends of the adjoining  
33 properties. And the zoning text amendment would ensure that that view remains in its  
34 beautiful and scenic state as it is today as it was when Justice Douglas walked the  
35 canal in 1954. I also want to note that the zoning text amendment would protect the  
36 health of the Potomac River and the water of the C&O Canal by serving as a water  
37 quality buffer. Two major sources of water pollutants in the canal and the Potomac are  
38 impervious surfaces and land disturbance. The closer you put those to a water body the  
39 more the pollution will increase. The C&O Canal and the Potomac River share water  
40 back and forth so any degradation to one is automatically degradation to the other.  
41 Installing this two-hundred-foot buffer would limit the amount of water pollution that  
42 you're getting off of the adjoining land and allow that two hundred feet to act as a water  
43 quality buffer from runoff from other places. More generally I want to emphasize that this  
44 is the backyard national park for all of Montgomery County and they depend on it daily



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1 for recreation, for going out with their families, for playing, for their quality of life. This  
2 means an awful lot to the citizens of Montgomery County. There are always going to be  
3 those that claim that any zoning requirement is an infringement on their property rights,  
4 it's unfair, it's a taking, whatever they want to say. I'm asking you to look at the public  
5 welfare and vote for this zoning text amendment.

6  
7 President Praisner,  
8 Thank you. Mr. Mardirossian?

9  
10 Mr. Mardirossian,  
11 Madam President and (inaudible) Council, my name is Aris Mardirossian. I currently  
12 own with my wife and children a recorded lot at 12000 River Road in Potomac onn  
13 which we are hoping to build our dream home. I am appearing before you to voice my  
14 strong opposition to put (inaudible) Zoning Text Amendment 07-04. I wish to build an  
15 attractive see-through fence in my backyard to protect my children and keep stranger  
16 from intruding on my property. Not a wall, not something colorful or unusual or strange  
17 just a nice fence. This zoning text amendment essentially applies to certain (inaudible)  
18 certain federal park land and county and only applies to one- and two-acre zoned  
19 residential home sites. It only applies to accessory uses but not to primary uses. In  
20 other words, this proposal is aimed specifically at me and my family. What is the public  
21 policy being advanced here? This law does not apply to home adjoining to federal park  
22 land or a state park land or county park land. This law doesn't apply to (inaudible)  
23 homeowners in R200 zone or R90 or R60 zone. This law doesn't apply to primary use  
24 at home sites. For over a year I have been trying to build my home, protecting my family  
25 and playing by the rules. I have faced numerous false allegation concerning  
26 construction on my home. Please reject this proposal it is unfair, unneeded, unwise. I  
27 know you have far more important things to do for furthering people's business.  
28 Presently we are working with Councilmember Roger Berliner's office to see if we can  
29 accomplish some type of fair resolution to this text amendment. Please do not depart  
30 from tradition of passing ill-conceived bill. This bill, if it's passed, should be named Aris  
31 Mardirossian Text Amendment. Thank you.

32  
33 President Praisner,  
34 Thank you. I know Mr. Brandt is not available right now because he is at the service for  
35 former Congressman Gil Gude. Should Mr. Brandt arrive before we are done this  
36 afternoon, I would allow him to come and testify. Councilmember Floreen?

37  
38 Councilmember Floreen,  
39 Thank you, Madam President. I had a question for Ms. Marks and Ms. Merwin about the  
40 application of this. Basically this restricts accessory structures, whatever, I gather from  
41 located 200 feet from the boundary line. You think we should apply it to all the  
42 properties along the canal? I mean, I guess, that's where you're going with your  
43 comments; water quality issues.



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1 Ms. Merwin,  
2 By this you mean apply it to the smaller parcels?

3  
4 Councilmember Floreen,  
5 Yeah. And they really have the greater impact on the views and the - .

6  
7 Ms. Merwin,  
8 Ideally -- in an ideal world, yes, that would provide the most environmentally sensitive  
9 solution. However, we also understand that smaller parcels have much less room to  
10 build and that people have a right to use their property. So it seemed like a reasonable  
11 middle ground to take properties that were large enough where a 200-foot buffer would  
12 not functionally change what they were allowed to do with their land and apply it to  
13 those properties, understanding that it would simply be too much of a hardship on  
14 smaller lots.

15  
16 Councilmember Floreen,  
17 But those -- the smaller properties are the ones that have the impact on the views and  
18 on the water quality issues far more so than the larger lots.

19  
20 Ms. Merwin,  
21 The large properties can have equal or larger impacts on the views because you can  
22 build larger houses on the larger properties. I'm specifically thinking of the Virginia side  
23 that all Marylanders love to say this isn't us; our side of the Potomac doesn't look like  
24 this with these enormous houses that you can't avoid seeing. I just think it -- ideally yes,  
25 it would be applied to smaller lots, but practically I think it's difficult and I -- I'm happy  
26 with the compromise that has been made with the text amendment as it's written.

27  
28 Councilmember Floreen,  
29 How about you, Ms. Marks? What do you think?

30  
31 Ms. Marks,  
32 I was thinking only in terms of the larger lots.

33  
34 Councilmember Floreen,  
35 Yeah.

36  
37 Ms. Marks,  
38 I don't understand the full implications and the impact -- .

39  
40 Councilmember Floreen,  
41 Yeah, I mean, it has lots of implications. I'm just trying to think it through in terms of it --  
42 based certainly on the comments that you two both have advanced. It's a wonderful  
43 place. If your point is as Ms. Merwin indicated, the water quality really important and the  
44 environmental -- obviously the environment in which you're located, I mean, it's the



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1 feeling of it is just tremendous. I'm a bicyclist so I like to get out and enjoy that  
2 environment. But I often, I mean, the relationship issue applies just as much if not more  
3 so in the more -- the Cabin John area and down there where there is a lot more activity.  
4 So you just haven't thought about that?

5  
6 Ms. Marks,

7 My understanding is that this applies only to auxiliary structures so that anything that  
8 would be attached to the house without the consent (inaudible) part of this.

9  
10 Councilmember Floreen,  
11 Yeah. Yeah.

12  
13 President Praisner,  
14 Further questions, Ms. Floreen?

15  
16 Councilmember Floreen,  
17 No, I don't think so, thanks.

18  
19 President Praisner,  
20 Mr. Brandt, you've arrived and we'd love to hear you speak if you'd push the button in  
21 front of you, sir.

22  
23 Mr. Brandt,  
24 Thank you very much and my apologies -- .

25  
26 President Praisner,  
27 That's quite all right, I did explain.

28  
29 Mr. Brandt,  
30 Okay, thank you. Well good afternoon, my name is Kevin Brandt and I'm the  
31 Superintendent of the C&O Canal National Historical Park. County Councilmembers I  
32 appreciate the opportunity to present my comments to -- on the issue of prohibiting  
33 accessory structures within certain areas along the canal. The C&O Canal National  
34 Historical Park was created by an act of U.S. Congress in 1971. The C&O Canal is the  
35 largest National Park in the state of Maryland and contributes more than \$30 million to  
36 the regional economy. It's also the most visited National Park in the state with over 3.1  
37 million visitors last year. Greater in fact than Yellowstone, or the Everglades, and similar  
38 to Yosemite of Olympic National parks. It's also in the top 20 of all 391 National parks in  
39 this country. About 20% of the park is in Montgomery County and about two-thirds of  
40 the park's visitation occurs here. One of my goals while privileged to be the  
41 superintendent of this wonderful National Park is to help reconnect citizens and  
42 communities with their canal heritage by reaching out to communities up and down the  
43 canal and finding that our citizens care about the National Park in their backyard. It is a  
44 park that is 184.5 miles long and as narrow as a football field in some places, the





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1 challenges presented to local and state officials and park staff and neighbors are  
2 significant. Protecting the historical, scenic and natural resources of the C&O Canal  
3 from physical and visual impacts and encroachments is an important job for all of us.  
4 The C&O Canal's designation as a National Historical Park is the highest level of federal  
5 protection for a cultural resource and is the historical equivalent of protecting natural  
6 resources in a park such as Yellowstone. Having said that, the park's natural and scenic  
7 resources are among the top reasons cited by visitors when asked why they visit the  
8 park. In fact the Potomac River gorge from Great Falls downstream to the county line  
9 contains an extraordinary diversity of flora and fauna ranging from state and federally  
10 listed state rare plants to globally rare ordinales or dragonflies as they are more  
11 commonly called. The gorge is indeed an area of extraordinary scenic, biological and  
12 historical value. In addition to the land owned in fee title by the National Park Service,  
13 we hold 194 scenic easements over private lands along the canal. These easements  
14 were generally acquired in the mid 1970's in lieu of fee acquisition where significant  
15 residential development was within the congressionally authorized boundary. These  
16 easements are neither continuous along the park boundary nor do they utilize  
17 contemporary language which would make them good tools to protect park values. Still  
18 we work with the tools we have. Over the last three years my staff and I have worked  
19 hard to improve our stewardship of park resources and values by communicating better  
20 and exchanging more information with county officials and residents, and I can report  
21 that there has been a mutual effort to positive ends. This zoning text amendment is  
22 another example of how the elected leaders and citizens of Montgomery County are  
23 demonstrating their stewardship for this local and national treasure. I appreciate your  
24 efforts towards preserving this National Park for future generations. Thank you very  
25 much.

26  
27 President Praisner,  
28 Thank you. Mr. Berliner?

29  
30 Councilmember Berliner,  
31 Superintendent, I appreciate your comments. I don't know how long it's going to take  
32 (inaudible) take a bet on this one. I appreciate your support for the legislation that my  
33 colleagues and I have put forward. I think it's important for the record to explore part of  
34 the genesis for it; and you spoke of the scenic easements that you have on private  
35 property. Am I correct that you have 30 days in which to act on an application for -- for  
36 example, a fence that would affect the scenic easement and it gets put forward to you;  
37 is that correct?

38  
39 Mr. Brandt,  
40 One of the terms and conditions is that upon the submission of a written request if we  
41 don't respond within 30 days then the request is deemed approved by operation of that  
42 term and condition of the easement.

43  
44 Councilmember Berliner,



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1 And have there been incidents recently in which unless 30 days expired before you  
2 were able to provide comments?

3  
4 Mr. Brandt,  
5 Yes, there was.

6  
7 Councilmember Berliner,  
8 And is it your view that the expiration of that 30 days was a reflection of the substantive  
9 views of the park service with respect to that application?

10  
11 Mr. Brandt,  
12 I guess I'm -- .

13  
14 Councilmember Berliner,  
15 I'm sorry, I'm being a little -- what I wanted to know -- let me try one more -- I'm sorry  
16 that lawyer brain just -- as you observe by failing to comment within the 30 days the  
17 application was approved?

18  
19 Mr. Brandt,  
20 Yes, it was.

21  
22 Councilmember Berliner,  
23 My question to you is if you had to do it all over again, would it have been approved?

24  
25 Mr. Brandt,  
26 Well, I guess that's a question for, you know, the ages, but to my knowledge no waiver  
27 like that has been granted in my knowledge previously.

28  
29 Councilmember Berliner,  
30 So in some ways what the Council is doing now is in effect backstopping what your  
31 agency has lead responsibility for and we're trying to ensure if that were to happen  
32 again that we have some protections in place with respect to this; is that a  
33 characterization that you would find to be fair?

34  
35 Mr. Brandt,  
36 I think that's a good way of describing it. You know, it's an excellent of the national and  
37 local governments working together to protect park resources and park values.

38  
39 Councilmember Berliner,  
40 Thank you, sir.

41  
42 President Praisner,  
43 Councilmember Floreen.



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1 Councilmember Floreen,  
2 I just had a question about that exchange. Is this intended to apply to properties where  
3 there is a park service easement? Is that the point? Actually, it's for Mr. Berliner, I  
4 guess.

5  
6 Councilmember Berliner,  
7 I think it does apply.

8  
9 Councilmember Floreen,  
10 Is that the driving -- .

11  
12 Councilmember Berliner,  
13 It does apply to those properties yes.

14  
15 Councilmember Floreen,  
16 Yeah, I know it does, but is that the subcategory of properties it's intended to apply?

17  
18 Councilmember Berliner,  
19 It applies to those properties and beyond. It's not limited to those properties.

20  
21 Councilmember Floreen,  
22 I know that but the intention was to apply to properties subject to the easement?

23  
24 Councilmember Berliner,  
25 The intention was to include properties that were subject to the easement, yes. And  
26 certainly this matter was brought to our attention in part as a function of the failure of the  
27 park -- .

28  
29 Councilmember Floreen,  
30 (Inaudible) situation -- .

31  
32 Councilmember Berliner,  
33 To have exercised its substantive authority within the 30 days.

34  
35 Councilmember Floreen,  
36 Okay.

37  
38 President Praisner,  
39 Okay. There are no further questions for this group. Thank you all very much. We have  
40 four more speakers on this zoning text amendment. Ginny Barnes, West County  
41 Citizens Association; Stan Abrams; Edwin Brook; and William Rickman. And if those  
42 individuals could come forward please. And, Ginny, you are first. If you could begin,  
43 Ginny, we are running a little late and folks can get the documents later.



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1 Ms. Barnes,  
2 Thank you. For the record my name is Ginny Barnes and I'm representing the West  
3 Montgomery County Citizens Association.

4  
5 President Praisner,  
6 Could you speak up a little, Ginny.

7  
8 Ms. Barnes,  
9 I'm sorry.

10  
11 President Praisner,  
12 The mic is on but could you speak up a little more.

13  
14 Ms. Barnes,  
15 I don't talk loud, you know that.

16  
17 President Praisner,  
18 I know the light (inaudible) capture your -- .

19  
20 Ms. Barnes,  
21 Except in extreme situations. The C&O Canal National Historic Park forms the western  
22 border of the Potomac sub-region master plan area, and until recently we who have  
23 lived closely by it have assumed it was protected and invulnerable. But events at  
24 Swain's Lock several years ago gave rise to the C&O Canal Stewardship Task Force  
25 created by Congressman Van Holland. As a representative from West Montgomery  
26 County Citizens Association on that task force, I served and came to see that this park  
27 needs not only our individual and collective support as citizens who use it and love but it  
28 needs legislative and regulatory partnerships with local jurisdictions that border it, and  
29 communications networks with those jurisdictions that have not existed in the past. And  
30 Kevin mentioned improve communications. Personally, I am deeply connected to this  
31 remarkable park. And I don't often talk about this in testimony, but I live in a log cabin  
32 that sat behind the tavern at Great Falls and served as the lockkeeper's house. It now  
33 over looks the Watts Branch which enters the Potomac at the water filtration plant on  
34 River Road. In the 30 plus years I've lived in Potomac I've spent endless hours walking  
35 on the canal and adjacent park trails. I've birded, hiked, monitored amphibians, painted  
36 water colors, and taken every visitor from out of town to walk the canal and experience  
37 the history and wonder of so beautiful a place. I've even written articles for the local  
38 papers declaring that the real luxury we enjoy in Potomac is the ability to so easily set  
39 foot on the C&O Canal and walk the Cumberland or Georgetown; take your pick. So we  
40 create this proposed ZTA with enthusiasm as a way to augment existing scenic  
41 easements and focus on the special need to protect narrow view-scape so important to  
42 the historic and cultural experience of this particular National Park. We believe it has  
43 been carefully drafted to be a reasonable common sense balance between protecting  
44 the resource and respecting the needs of property owners, but it doesn't really go far



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1 enough in our opinion. We agree with the Planning Board recommendations dated June  
2 5. The setback restrictions should apply to all properties in Montgomery County, not just  
3 low-density residential and agricultural zones. There should be no grandfather  
4 provision; as you know the Planning Board staff put that forward and the Planning  
5 Board rejected it. We especially share the Planning Board concern for unintended  
6 consequences associated with replacing accessory use with accessory structure. A  
7 more inclusive solution is wiser here, and we would also -- as the Planning Board  
8 (inaudible) said would rather see structure added without eliminating the word "use." We  
9 found in West Montgomery that when you start messing with the zoning ordinance  
10 language there are no end of problems in the future. I would also add that the Audubon  
11 Naturalist Society may be unable to testify today and they've given me permission to  
12 express their support for these comments. Thank you very much.

13  
14 President Praisner,  
15 Thank you. Mr. Abrams?

16  
17 Mr. Abrams,  
18 Madam President and members of Council, I'm Stan Abrams. I'm an attorney with  
19 offices in Bethesda, Maryland. I speak in opposition to this text amendment which I  
20 believe is hastily conceived, legally suspect, and does not accomplish the stated  
21 purpose of preserving the scenic and biological integrity of the C&O Canal Historic Park,  
22 and this is so for several reasons. First of all the 200-foot setback for accessory  
23 structures from the historical park boundary line is applicable only to large-lot zones and  
24 does not include numerous other single-family residential zones which may also border  
25 the park further down County. It is therefore discriminatory and does not accomplish the  
26 purpose of this text amendment. Why a fence of shed in an R200 or a 90 or a 60 zone  
27 lot in close proximity to the boundary of this National Park is acceptable and preserves  
28 the scenic and biological integrity of the park but were in a RE2 and RE1 zones does  
29 not; it's unanswered in this text amendment. The text amendment pertains only to  
30 accessory buildings and structures but does not pertain to the larger more invasive or  
31 prominent primary permitted uses such as a house, church, foster care or group  
32 daycare home, a museum or non-commercial kennel, or fire and rescue stations, all of  
33 which are permitted uses in the covered zone and would not be eliminated from this text  
34 amendment. Thus (inaudible) the purpose of this amendment is a (inaudible) at best  
35 and belies any real purpose for this amendment. The text amendment is further  
36 discriminatory and it does not apply to similar structures erected within 200 feet of a  
37 state park, a local park, or within 200 feet of a historic site or resource. Apparently these  
38 resources and public park areas either do not have the same priority status or the  
39 Council sponsors are more concerned about the political or legal ramifications of  
40 extending the restrictions to all other properties bordering park and historic areas in  
41 Silver Spring, Wheaton, Clarksburg, Germantown and other areas. The text amendment  
42 would have unintended and far-reaching consequences since structures include ramps  
43 for wheelchair accessibility, compost bins, flag poles, poles supporting boat houses, or  
44 even no trespassing or loitering signs since such signs are defined in the zoning



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1 ordinance as a structure. Prohibiting such signs in addition to prohibiting fences  
2 adversely affects a property owner's right to exclude others and to protect himself and  
3 his property from liability or criminal activity. The way to exclude according to the  
4 Maryland Court of Appeals in a recent decision as a constitutional protected property  
5 right which this legislation cannot impair without payment of compensation as a  
6 regulatory taking. Finally, there is no grandfather provision which you would have  
7 attached to numerous other pieces of legislation which would protect somebody with a  
8 lawfully erected nonconforming structure from being protected or which has applied for  
9 and received a valid building permit from being protected by this sudden change in  
10 rules. Thanks you for your time.

11  
12 President Praisner,  
13 Thank you. Our final speaker.

14  
15 Unidentified,  
16 Does everyone have one of these?

17  
18 President Praisner,  
19 I don't know. It will be passed to us; if you could just begin speaking -- push the light in  
20 front of you, please. Thank you.

21  
22 Mr. Rickman,  
23 Very good. My name is William Rickman. I live at 12010 River Road, Potomac,  
24 Maryland. I live on a parcel that is affected by this amendment. I really need this out and  
25 I don't want to lose my time while you're passing it out.

26  
27 President Praisner,  
28 Just keep talking, we'll get them don't worry.

29  
30 Mr. Rickman,  
31 But you need this in front of you. In essence I want to show you a real live example of  
32 what's going on here. I've lived in Montgomery County my whole life. I'm a steward of  
33 the park and the canal. I did not own this parcel that is in front of you. If you look at the  
34 second sheet, you see it's all green. My house would be on the right side. I bought a  
35 two-acre parcel there. I bought it with the scenic easement on it. A scenic easement  
36 with very restrictive. Paid a lot of money for it. Now what you're trying to do is put  
37 another easement on top of it, which would be in red on the front sheet. Again, the  
38 scenic easement originally was acquired. Now, you're trying to have an easement  
39 without acquiring it. I have no usage for this property, and I don't want you to think that  
40 I'm trying to do something there that would hurt the park because I bought this to protect  
41 the park. But again, the most important thing is it's my property, and now, what you're  
42 trying to do is say that you can be a better steward than I can. Well obviously I didn't  
43 think that or I wouldn't have bought it. I think whenever you have an easement and you  
44 take something from somebody, you're required to pay for it. I don't want you to pay me



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1 anything. I want you to reject this amendment, because I am already the steward of this  
2 piece. I think what the problem is is that you've poorly policed the previous easement,  
3 so fix the easement to give yourself more time. You can do things in that area, but they  
4 have to be within very stringent guidelines. Again, I'm not an advocate of doing anything  
5 there, I just wanted that two acres. That's what you're going to do to that two acres of  
6 property. There are other consequences. There are things that I think are inside that  
7 200 feet. I believe there's a very nice gazebo that was built by one of the Chief Justices  
8 years ago. I think it might be inside that; I'm not 100% sure it's on the WSSC property.  
9 Very few people know it's there, and you have to look very hard to see it. So again,  
10 we're dealing with rights of people. We have already -- somebody has already been  
11 paid for an easement, and now what you're trying to do is have another easement on  
12 top of an easement and trying to get for -- to impose more conditions on this property  
13 than there were before, and you're trying to do it for nothing. I basically think that's  
14 wrong. I don't think the idea's wrong, but I think I can police this property. That's why I  
15 bought it. Thank you.

16  
17 President Praisner,  
18 Thank you. Mrs. Floreen.

19  
20 Councilmember Floreen,  
21 Thank you. Mr. Rickman, so this is your property?

22  
23 Mr. Rickman,  
24 This is a lot that I purchased.

25  
26 Councilmember Floreen,  
27 It's a lot. You don't have a home there.

28  
29 Mr. Rickman,  
30 No, my house would be on the right-hand side. I have two acres there. I also bought  
31 another two acres in front.

32  
33 Councilmember Floreen,  
34 So do you have any structures on this?

35  
36 Mr. Rickman,  
37 None whatsoever.

38  
39 Councilmember Floreen,  
40 Or in the place that would subject to this -- .

41  
42 Mr. Rickman,  
43 I don't have any structures anywhere on this piece of property right there.



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1 Councilmember Floreen,  
2 Or on this area where a structure has been prohibited right now.

3  
4 Mr. Rickman,  
5 No.

6  
7 Councilmember Floreen,  
8 No.

9  
10 Mr. Rickman,  
11 I don't want you to think that I'm trying to leave the door open to build something. I'm  
12 doing this because I bought it to protect it to make sure no one else did; but I believe  
13 that's my job because I paid for it.

14  
15 Councilmember Floreen,  
16 So tell me a little bit about the easement, and I guess, I'd like staff to tell us whenever  
17 we work on this in the committee; when you bought the property it was subject to this  
18 easement.

19  
20 Mr. Rickman,  
21 Yes, and that is the green as you can see. It's almost covered by green, and so it has  
22 restricted easement.

23  
24 Councilmember Floreen,  
25 Okay. I see. So this whole green area is currently subject to a park service easement?

26  
27 Mr. Rickman,  
28 That's correct.

29  
30 Councilmember Floreen,  
31 And what does the easement say? It's recorded in the land record.

32  
33 Mr. Rickman,  
34 Yeah, I know. It's a very old one, and I do agree that it could need some updating. But  
35 you can do things there. You can put a gazebo there. You could put a -- you could even  
36 put a swimming pool that encroached on it a little bit. I have no intentions. I don't want to  
37 mislead anyone.

38  
39 Councilmember Floreen,  
40 I just don't (inaudible).

41  
42 Mr. Rickman,  
43 You can even do a tennis court, but you couldn't do it in a way that it detracted from the  
44 park. The intention was exactly what you're trying to do. So you've already got the





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1 easement. Why don't you just fix the easement instead of putting a blanket band. That  
2 wasn't the idea when the easement was purchased.

3  
4 Councilmember Floreen,  
5 Okay. Jeff, I don't know when the committee's going to take this. Maybe you know.

6  
7 Mr. Zyontz,  
8 The 18th.

9  
10 Councilmember Floreen,  
11 The 18<sup>th</sup>.

12  
13 President Praisner,  
14 It's on your agenda.

15  
16 Councilmember Floreen,  
17 Okay. Could you let us do some research into the easement experience, what the  
18 current rules are, what they permit, what they do not permit in the process, I guess, to  
19 the park service?

20  
21 Mr. Zyontz,  
22 Right, I will get that, but just like other easements, we're doing zoning here. We're not  
23 doing easements.

24  
25 Councilmember Floreen,  
26 No but I just wanted to understand and maybe, Mr. Rickman, if you have any  
27 information about -- .

28  
29 Mr. Rickman,  
30 I think it's important for you all to be very aware of what the easement says.

31  
32 Councilmember Floreen,  
33 Yeah, (inaudible).

34  
35 Mr. Rickman,  
36 And I do believe there have been some very bad things done that should have never  
37 happened, but it wasn't because of the easement if it was because of the improper  
38 policing of that easement.

39  
40 Councilmember Floreen,  
41 And the easement goes to the National Park Service?

42  
43 Mr. Rickman,  
44 Pardon?



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1  
2 Councilmember Floreen,  
3 The easement is to the National -- .

4  
5 Mr. Rickman,  
6 I'm not 100% sure.

7  
8 Councilmember Floreen,  
9 You don't know.

10  
11 Mr. Rickman,  
12 I can bring you a copy of that.

13  
14 Councilmember Floreen,  
15 Okay, well if you could share with us -- or if you could obtain such information and  
16 understand the process that applies. Is an easement acquired -- the Park Service  
17 acquires an easement? Does the Park Service buy that easement?

18  
19 Mr. Rickman,  
20 I don't -- I wasn't part of that. This was done years before I bought the property.

21  
22 President Praisner,  
23 Well we can get that information on easement -- .

24  
25 Councilmember Floreen,  
26 If you could make that available.

27  
28 Mr. Rickman,  
29 But what you're doing -- you might call it a zoning, but in essence, that's not what you're  
30 doing. You're creating an easement that doesn't allow anything.

31  
32 Councilmember Floreen,  
33 Okay. Okay, well if we can understand -- .

34  
35 President Praisner,  
36 I would respectfully disagree. An easement is one thing -- .

37  
38 Councilmember Floreen,  
39 I'm just trying to understand Mr. Rickman's point.

40  
41 Mr. Rickman,  
42 I'm just saying that it'd serve the same purpose.

43  
44 Councilmember Floreen,



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1 If you could provide us with what these easements are, and is there -- do we know  
2 where they are?

3  
4 Mr. Zyontz,  
5 I do not know all of the locations. I was never given -- .

6  
7 President Praisner,  
8 Well, our friend from the National Park Service is still here, and to the extent he can  
9 provide any information for us, he's taking notes. I'm sure that he will provide it.

10  
11 Councilmember Floreen,  
12 Yeah, I guess I should have asked this question, Mr. Brandt. If you could provide us  
13 with information about your process and where you have these easements along in  
14 Montgomery County that would be interesting and helpful. Mr. Rickman?

15  
16 Mr. Rickman,  
17 One more thing. This is a precedent what you're doing here. I mean this--this seems  
18 very reasonable and it is in fact the idea is very good. But the reality of -- if somebody  
19 were going to take 200 feet of the back of someone else's lot and say you can't do  
20 anything with it, and if it was yours, you'd have a real problem with it.

21  
22 Councilmember Floreen,  
23 Uh-huh. Well I'm understanding what you're already subject to and how many people  
24 are in your category -- this category of attention, I think, will be helpful in our (inaudible).

25  
26 Mr. Rickman,  
27 I'm offended by some things that have happened there. I want you to know that. And  
28 that's why I bought this.

29  
30 President Praisner,  
31 Thank you, Mr. Rickman.

32  
33 Councilmember Floreen,  
34 Thank you.

35  
36 President Praisner,  
37 I think we have already made a list of the questions and comments. Councilmember  
38 Berliner.

39  
40 Councilmember Berliner,  
41 I just -- .

42  
43 President Praisner,  
44 Mic.



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Councilmember Berliner,

Almost got it. I would just like to clarify for the record that there is nothing in this draft legislation that overrides the scenic easement. Okay. We have no effect with respect to the obligations that you or your predecessors agreed to when you acquired this property. The whole objective with respect to this was in fact when -- at least a partial objective with respect to this was when the National Park Service fails to exercise its rights under that scenic easement that had been defaulted to us to come up with a mechanism that would allow some enforcement of the spirit behind that which you had already agreed to. This is no way affecting your property at all to the extent of which you have a scenic easement with respect to it because we don't override that. All right?

Mr. Rickman,

No, that's not -- I don't quite agree with that because you can -- let's just say the -- you were able to get approval through the scenic process. This way it wouldn't do you any good if you were able to get approval to it.

Councilmember Berliner,

All right well we'll work with staff with respect to making sure that the processes are conjoined, if you will.

Mr. Rickman,

It should be fair. That's all that's important.

Councilmember Berliner,

Our objective was certainly to be fair and to preserve the scenic quality of the C&O Canal.

Mr. Rickman,

That is everyone's objective, but you better make sure that you do it right. That's all I'm saying.

Councilmember Berliner,

We're trying.

President Praisner,

I think that would conclude this public hearing, and we need to move onto the next one if I can find the papers. Good afternoon, ladies and gentlemen. This is a public hearing on Zoning Text Amendment 07-05 which would amend the Zoning Ordinance to accept (inaudible) new building permits from a finding of conformance to an approved sight plan, establish a procedure and standards for (inaudible) site plan amendments and generally amend site plan approval procedures. The PHED Committee worksession is tentatively scheduled for June 18, at 2:00 p.m. Please call (240) 777-7900 to confirm. Before beginning your presentation, please state your name and address clearly for the



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1 record and spell any unusual names. We have two speakers. Wayne Goldstein from the  
2 Montgomery County Civic Federation and Sharon Levine, from Montgomery Village  
3 Foundation. Is Wayne here?

4  
5 Mr. Brown,  
6 Excuse me, I thought I had my name on the list. Ed Brown?

7  
8 President Praisner,  
9 Mr. Brown, you were on the last list. I called you for the last hearing.

10  
11 Mr. Brown,  
12 I thought you called a different name.

13  
14 President Praisner,  
15 I called Edwin Brown for the last -- .

16  
17 Mr. Brown,  
18 I understood you to say Brook -- Edwin Brook.

19  
20 President Praisner,  
21 I'm pretty sure I said Brown. Are you here to testify on Zoning Text Amendment 07-04.

22  
23 Mr. Brown,  
24 Yes.

25  
26 President Praisner,  
27 Well we just completed that hearing, but since you're here, please have a seat, and if  
28 you can testify, you have three minutes.

29  
30 Mr. Brown,  
31 Thank you. I would like to -- .

32  
33 Councilmember Berliner,  
34 Press the button in front.

35  
36 President Praisner,  
37 You need to sit down, and press the button in front of you so that the mic is live.

38  
39 Mr. Brown,  
40 Okay, thank you very much. I would like to suggest that I'm the proprietor of Historic  
41 Whites Ferry, which operates entirely within the park boundary. We are in the park itself.  
42 We have a flood -- we're flooded out twice a year -- at least twice a year, all of our  
43 building structures go underwater, and I can't envision how this -- how we could rebuild  
44 and keep operating if we came under the strict limits of this proposed ordinance. The



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1 ferry is a great asset. It's a gateway to the agricultural preserve. We cross about 1500  
2 cars a day. It's probably one of the best attractions for the whole C&O Canal between  
3 Great Falls and Cumberland, and I think that this ordinance at its present form would --  
4 could present serious problems to our operation. Thank you.

5  
6 President Praisner,  
7 Thank you. I don't believe that is the case, but we'll have staff respond to that issue for  
8 you.

9  
10 Mr. Brown,  
11 Hope you'll consider it. Thank you.

12  
13 President Praisner,  
14 Thank you. Is Wayne Goldstein here or someone from the Civic Federation to testify on  
15 Zoning Text Amendment 07-05? If not, Sharon, you're the only one.

16  
17 Ms. Levine,  
18 Good afternoon. My name is Sharon Levine, and I'm here today on behalf of the  
19 Montgomery Village Foundation Board of Directors and the Legislative Committee of the  
20 Washington Metropolitan Chapter of the Community Associations Institute to express  
21 support for Zoning Text Amendment 07-05 Site Plan Amendment Procedures. We're  
22 very pleased that this zoning text amendment is before you for consideration and if this  
23 is the appropriate way to allow homeowner associations to engage in deminimous (sic)  
24 maintenance activities then we strongly endorse it. It's a good amendment. It restores  
25 an appropriate balance to the actions that occurred in 2006 in response to the  
26 Clarksburg situation. This ZTA will restore equity to the process for maintenance versus  
27 development activities. It seems pretty important to consider that the net effect of what  
28 seems to have been an unintended overzealous response to the Clarksburg situation  
29 has caught all of our aging communities in its net. In addition to Zoning Text  
30 Amendment 05-20 adopted in February 2006, which removes the distinction between  
31 major and minor site plans and mandates that a site plan amendment is the only way a  
32 certified site plan may be modified. There is also a memorandum of understanding  
33 between DPS and the Planning Board that precludes DPS from issuing a permit for  
34 repair, renovation, replacement project without a site plan amendment signed by the  
35 Planning Board Chairman. Then there are the procedural documents created by the  
36 Planning Board including the development review manual and the rules of procedure,  
37 the fee schedule and work sheet for site plan amendments. The bottom line is that the  
38 process and expense required to go through a site plan amendment in order to take  
39 care of aging infrastructure is onerous, it would cause unnecessary repairs -- it would  
40 cause necessary repairs and replacements to simply not get done, or if done, to  
41 conceivably bankrupt some of our associations. The new requirements and procedures  
42 that are proposed in this ZTA take care of this situation. I have heard Chairman Hanson  
43 say when discussing MBS requests for a deminimous maintenance exemption category  
44 that it was never intended to make it impossible for homeowner associations to maintain



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1 their infrastructure; so it may be helpful if I share with you a sampling of some  
2 infrastructure maintenance activities and projects that are currently facing homeowner  
3 associations. One of our associations needs to replace rotting retaining walls. Another  
4 community wants to install a small concrete pad at the Bay City Group mailbox where  
5 standing water collects after every rain. Some of our associations in the Montgomery  
6 Village Foundation need to replace aging playground equipment to bring it both to  
7 modern safety standards and ADA compliance. The fact is today's playground  
8 equipment is simply larger, takes up more space than that 20 or 30 years ago. Further,  
9 Montgomery Village and the individual HOA's and condo associations have an intricate  
10 and quite vast internal network of walking paths. These paths abut our private streets  
11 via rolling curves, and as the paths deteriorate, the replacement paths we've been  
12 installing include curb cuts. We were even told by DPS that if we wanted to replace a  
13 dead tree or pull the dead tree that we would have to get a site plan amendment signed  
14 off by Chairman Hanson. So all of these necessary improvements in which we must  
15 engage that would require a site plan amendment according to the standards today,  
16 need to be amended, and we think that the Zoning Text 07-05 - Zoning Text  
17 Amendment 07-05 removes the problem created by some of the recent actions and  
18 causes no hardship to anyone. The Montgomery Village Foundation also as opposed to  
19 Washington Metropolitan Chapter of the Community Association institute's Legislation  
20 Committee, we MVF advocate including in the deminimous maintenance exemption  
21 category some language that would allow our associations to make changes in lighting  
22 in response to the concern of residents regarding security situations. We really need to  
23 install a security light in a tot lot Montgomery Village Foundation owns yet lies actually  
24 between the Picten community of North Village and the Candle Ridge community in  
25 East Village. Those were two of the communities that were involved in the fence  
26 debacle. They actually agree on this; they all want the security light. And it lies deep  
27 with the property, it lies deep within our own property, and installation of this really  
28 should be allowed, we think, without need for a site plan amendment. In summary, we're  
29 very pleased that this Zoning Text Amendment allows certain maintenance activities,  
30 renovation, replacement activities without a finding of conformance to an approved site  
31 plan and that it allows minor site plan amendments to be approved by the Director of  
32 Park and Planning rather than by the Planning Board. We do think however it would  
33 seem appropriate if the minor site plan amendment fee schedule and application noted  
34 lower fees than the current range of \$450 to \$2,250 per amendment application. On  
35 behalf of Montgomery Village Foundation and Washington Metropolitan Chapter of CAI,  
36 I urge you to approve this Zoning Text Amendment, and thank you very much.

37  
38 President Praisner,

39 Thank you. We already did receive comments as part of the other public hearing from  
40 the planning staff, and we're waiting for the Planning Board's comments. I do think I  
41 want to make a comment from a standpoint of someone who's raised questions when  
42 this Zoning Text Amendment was introduced. I think the devil is in the detail that might  
43 be associated with the site plans to begin with from a standpoint of what is considered a  
44 modification, but I personally do share some of the Planning Board staff's concern about



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1 the broadness of the terms used in this Zoning Text Amendment for modifying a parking  
2 lot or a loading area, for example. You could modify a parking lot by having significant  
3 negative impacts on lots of folks, and without including storm water runoff issues,  
4 lighting issues, a variety of issues. So I think what I'm anxious to see from the Planning  
5 Board and staff is some way of responding to what I think are legitimate concerns that  
6 have been raised by Montgomery Village that may be associated with the original site  
7 plans and the restrictions for the village when it was created versus some of the other  
8 issues that surface about modification. So I hope you'll work with us in looking at that  
9 issue.

10  
11 Ms. Levine,

12 Yes. Perhaps the one item here that could be altered, it calls for a 1,000 square-foot  
13 change increase in impervious surface. I think that was mentioned somewhere. Perhaps  
14 that could be decreased.

15  
16 President Praisner,

17 That came from the planning board staff, but that's not in the language here. It just says  
18 in broad sense. So I look forward to having input from you. Councilmember Elrich?

19  
20 Councilmember Elrich,

21 Yeah, similarly I'd like some feedback from staff on the provision of replacing an existing  
22 structure that has the same function and not larger than 10% height or area. Can an  
23 existing structure, for example, be a freestanding restaurant? You know, you submit a  
24 site plan for one of the centers there and they've got some stores and a hurricane  
25 comes along and causes damage and they want to replace it; does that mean that  
26 every commercial building can get 10% larger?

27  
28 Jeff Zyontz,

29 The definition of structure includes buildings, so I think we would have to worry about  
30 that one.

31  
32 Councilmember Elrich,

33 Is -- yeah, I mean, I understand Montgomery Village's concerns. I think everything you  
34 said in -- given us email after email and email on is correct. It was correct on the first  
35 email.

36  
37 Jeff Zyontz,

38 (Inaudible) has been very effective.

39  
40 Councilmember Elrich,

41 It was very effective. Actually, I'd say the verbal presentation you did at a meeting that  
42 several of us were at I thought was very effective. And I have no question about that. I  
43 do have a question about the details. I don't -- I never heard anybody in the Village talk  
44 about existing structure in the sense of if something happened to the shopping center,





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1 people would be fine if everything was 10% bigger. I thought of it as a playground  
2 structure.

3  
4 Ms. Levine,

5 This is how we thought of it too. We have no jurisdiction really over the shopping center.  
6 It's a -- within town sector but we have no jurisdiction over it other than architectural  
7 signage, colors, that sort of thing. Please understand one other thing; of the 64  
8 subdivisions in Montgomery Village, 33 are without site plans. And not to say they never  
9 existed but they do not exist now, and this presents a problem for the older  
10 communities.

11  
12 Councilmember Elrich,

13 I guess also to ask Park and Planning staff to consider whether -- if this is an  
14 abbreviated process and we think of our fees as sort of reflecting the cost of going  
15 through what we put everybody through that if they really are going -- not have to go  
16 through all of that, should the fee reflect the fact that they're not going through the full  
17 kind of review that staff would normally do? And then in which case I think the fee ought  
18 to be really adjusted downward accordingly.

19  
20 President Praisner,  
21 Councilmember Floreen.

22  
23 Councilmember Floreen,

24 Well, just listening to this exchange I think there are good points, and I just observed  
25 that what was the staff memo on this and I see that the board is going to take this up on  
26 the 18th.

27  
28 President Praisner,  
29 Yeah, that's what Greg said.

30  
31 Councilmember Floreen,  
32 Which is the same day -- .

33  
34 Unidentified,  
35 The 14<sup>th</sup>.

36  
37 President Praisner,  
38 No, the 14<sup>th</sup>.

39  
40 Councilmember Floreen,  
41 Oh, okay. So that's been corrected. So we'll see -- have the board's comments before  
42 we have it (inaudible).

43  
44 President Praisner,



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1 Yes.

2

3 Jeff Zyontz,

4 Yes, you -- I will not have an opportunity in the memo I give to the PHED committee, but  
5 I already have the staff report.

6

7 Councilmember Floreen,

8 Okay. So we can work through that then.

9

10 President Praisner,

11 Thank you. Good afternoon, ladies and gentlemen. This is a public hearing on Bill 7-07  
12 Tenant Displacement, Sale of Rental Housing, Right of First Refusal, which would  
13 require the owner of certain housing built before a certain date to giving the County, the  
14 Housing Opportunities Commission and any tenant organization the right to buy the  
15 rental housing before it is sold to another person. And generally amend the law relating  
16 to tenant displacement and sale of rental housing. Planning Housing and Economic  
17 Development Committee worksession is tentatively scheduled for June 18th at 2:00  
18 p.m. Additional material for the Council's consideration should be submitted by the close  
19 of business Wednesday, June 13. Before beginning your presentation, please state  
20 your name clearly for the record. We have five speakers - Richard Nelson, Mr. Nelson  
21 speaking for the County Executive; Scott Minton or Peter speaking for the Housing  
22 Opportunities Commission. I don't see Nguyen Minh Chau; Tom Bouzzuto, speaking on  
23 his own behalf; and Melpi Jeffries, speaking for the League of Women Voters. Mr.  
24 Nelson, you're first.

25

26 Mr. Nelson,

27 I'm Rick Nelson, Director of --

28

29 President Praisner,

30 Is your mic on, Rick?

31

32 Mr. Nelson,

33 Yes, it is.

34

35 President Praisner,

36 We're having trouble with the volume; can you speak up please?

37

38 Mr. Nelson,

39 All right. I'm Rick Nelson, Director of Housing Community Affairs, and I'm please to  
40 testify on behalf of the County Executive in support of Bill 7-07 Tenant Displacement.  
41 This proposed legislation is part of the County Executive's initiative to preserve and  
42 expand affordable housing in Montgomery County. And I want to take this opportunity to  
43 express our appreciation to all members of the Council who cosponsored this  
44 amendment. The bill amends the current County Law 53A, Tenant Displacement, which



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1 exempts all rental facilities for which the initial building permit was issued after February  
2 5, 1981, from Chapter 53A Right of First Refusal Provisions. Approximately 25,200  
3 multi-family rental units have been constructed since February 1981 and are currently  
4 exempt. These facilities represent approximately 37% of all multi-family rentals in the  
5 County. Bill 7-07 would provide the County -- the Montgomery County Housing  
6 Opportunities Commission and a certified tenant organization in opportunity to match  
7 any offer of sale in all rental facilities of four or more units in the County. Given the  
8 increasing need to preserve rental housing and maintain a portion of it as affordable to  
9 lower and moderate tenants to continue to exempt such a substantial portion of the  
10 County's rental stock does not appear to be prudent public policy. This right of first  
11 refusal provision is very important and a valuable tool in our efforts to address the  
12 shortage of affordable housing and rental housing in the County. It provides the County  
13 (inaudible) with the opportunity to purchase a rental property but to alternatively receive  
14 an agreement from a perspective private purchaser to commit the maintaining  
15 affordability for an extended period of time. In conclusion, let me add a couple of  
16 important points I think. The County has had this law for 26 years. And through judicious  
17 and limited use of these provisions the County has benefited and the market has not  
18 been negatively affected as a result of the Montgomery County law. Examples of  
19 problems in other jurisdictions with different laws are non-applicable due to the  
20 application of 53A. Secondly, in addition to preserving and/or acquiring additional  
21 affordable units, this provision allows us as is the situation in a current case to be the  
22 catalyst in turning around small neighborhoods suffering from decline and its intended  
23 problems. For all of these reasons, we encourage you to pass this amendment. Thank  
24 you.

25  
26 President Praisner,  
27 Thank you. Peter?

28  
29 Mr. Engel,  
30 Good afternoon, I'm Peter Engel with the Housing Opportunities Commission  
31 Montgomery County, and we're here in support of Bill 7-07. Much of the affordable  
32 housing in Montgomery County is currently de facto affordable housing. It is affordable  
33 because of what it is, not because it has restrictions on it. The current law allows us to  
34 buy those if they were built before 1981 and help preserve them for the long term.  
35 We've been unable to purchase those built after 1981 through the right of first refusal  
36 and that's left a real hole in our ability to ensure an adequate supply of affordable  
37 housing. Obviously preservation is more efficient than new construction and maintaining  
38 the housing stock or adding to the actually long term affordable housing stock, and also  
39 allows people who are already in units to stay there as opposed to being displaced. The  
40 current law has been very effective in allowing us to preserve affordable housing. As Mr.  
41 Nelson has said, we've used it strategically at times, it has not been used very  
42 frequently. In 2004, we bought Padding ton Square Apartments, a 166-unit project; and  
43 we believe after our purchase it's a better project. We've done some rehabilitation on it,  
44 and it's a better home and better for the neighborhood and our relations with the



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1 neighborhood. More recently we bought a project on Dale Drive in Silver Spring and  
2 that's being used, or will be used for permanent housing for the homeless. It gives us  
3 again one of our few tools to help address homelessness in Montgomery County. As  
4 time goes on a greater and greater percent of housing will have been built after 1981 so  
5 we're fighting a losing battle here. I guess it's already at 37% and obviously will be  
6 growing; the amendment will allow us to remedy that situation. We would like to  
7 recommend one change to the legislation. The current law exempts mobile home parks  
8 from the right of first refusal. We would like to remove that exemption. Mobile home  
9 parks offers affordable housing currently, and when they're purchased -- recent history  
10 when they've been purchased they've been knocked down. Tenants have been  
11 displaced. Market rate housing has been put in place, and we'd like to have the  
12 opportunity to preserve either the mobile home park or the type of housing and  
13 affordability of the housing that's already located there. Thank you again for the  
14 opportunity to support the bill, and we'd be happy to answer any questions.

15  
16 President Praisner,  
17 Thank you. Mr. Bouzzuto.

18  
19 Mr. Bouzzuto,  
20 I'm Tom Bouzzuto, Madam Chairman, members of the County Council. Thank you for  
21 the opportunity to appear before you today. I'm here not only in my role as owner,  
22 developer and manager of apartment communities but also as a long-time advocate for  
23 affordable housing. Since my first job at HUD, I have been involved in and committed to  
24 increasing the supply of affordable housing. Of the more than 41,000 homes and  
25 apartments I have developed in my career approximately 8,000 of those have been for  
26 people of lower income. I have long believed that people who are concerns about  
27 housing should be like doctors in the sense that the first promise we make should be to  
28 do no harm. This Bill does harm. It does harm by discouraging investment here in new  
29 apartments in Montgomery County. I'm sure the Council understands that when Tom  
30 Bouzzuto or one of my peers builds a new apartment community, the money is not my  
31 own. At our property in Wheaton, for example, the equity came from retired and not yet  
32 retired teachers in New York State whose pensions are invested on their behalf. And  
33 our Lakeland's project, the money came from people who have their insurance policies  
34 with Northwestern Mutual. As is evidence by the letter I am attaching to my testimony  
35 from a pension-fund advisor at J.P. Morgan, these pension funds and other investor  
36 groups have the opportunity to look at real estate all over the United States. They have  
37 the option of investing in office buildings, hotels, shopping centers, as well as or instead  
38 of apartments. And they are looking to make such smart investments for their clients. In  
39 recent years it has been comparatively easy to attract capital for new apartment projects  
40 in the Washington area because of the strength of our market. If this Bill were to pass,  
41 however, investors would not only have to think long and hard about the project's ability  
42 to achieve a market return, they would also have to weigh the risk of ultimately selling at  
43 a below-market price. Real estate investors look at two components of return. They look  
44 at money from operating the property -- cash flow, and they look at money received



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1 from the sale of a property. Because this Bill will dampen the potential profit of a sale,  
2 investors will have to make their investment based primarily on cash flow. This means  
3 that they're going in return will have to be higher, and that as in Washington, D.C. where  
4 similar legislation exists, only the most expensive new projects will be built. And so like  
5 much other well-intentioned legislation, the outcome of this Bill will be the opposite of  
6 the one desired. This Bill will make it harder to develop new apartments in the County  
7 and it will make it necessary to push the envelope on luxury on those that do get built in  
8 order to achieve the highest possible rent. Please do not support a bill that works  
9 against the cause of affordable housing. Thank you.

10  
11 President Praisner,  
12 Thank you. Melpi.

13  
14 Ms. Jeffries,  
15 Good afternoon. I'm Melpi Jeffries, Chair of the Housing Committee of the League of  
16 Women Voters of Montgomery County. As you know housing issues have been a focus  
17 of league research, study, and discussion since the early '60s. The League of Women  
18 Voters strongly supports comprehensive efforts by Montgomery County to maintain and  
19 increase the supply of affordable housing including the preservation of existing  
20 communities. We would like to commend you for including the \$30 million in the  
21 Montgomery Housing Initiative Fund to acquire and rehabilitation affordable housing in  
22 the FY08 Operating Budget. The League supports Bill 7-07 which will allow the County  
23 to have the right of first refusal in the HOC. Apparently, approximately 25,200 family  
24 units would be subject to this right of first refusal, and I don't know how many of those  
25 are affordable, but judging by their building date, they should be. As the County affords  
26 build out -- approaches build out and the creation of affordable housing becomes more  
27 difficult, the preservation of existing affordable housing becomes of paramount  
28 importance. Montgomery County cannot continue to lose affordable housing at the  
29 current rate. Therefore, we urge the enactment of Bill 7-07, an important tool for the  
30 County's efforts to ensure the availability of housing, affordable housing in Montgomery  
31 County. Thank you for your attention.

32  
33 President Praisner,  
34 Thank you. We have several lights. I would like staff for the committee worksession and,  
35 Rick, yourself as well to respond to the suggestion included in the attachment to Mr.  
36 Bouzutto's testimony that suggests that if the Council and the Executive are still  
37 committed to going forward that we might limit the amount of time during which the  
38 County might exercise that option. It's included in the testimony from J. P. Morgan, Mr.  
39 Comber, suggesting that if, on the other hand, we insist on going forward, we would  
40 encourage them to consider nothing longer than a 60-day right to match the perspective  
41 and ask you to look at that issue, and the extent to which in the previous actions with  
42 properties for which it was eligible, how long did it take the County and HOC or  
43 whomever tenants might be the longest piece, perhaps, to respond; if you can provide  
44 some background data on that it would be useful. Councilmember Leventhal.



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Councilmember Leventhal,

Yeah. I appreciate the Council President highlighting that point in the attachment with Mr. Bouzutto's testimony because I did want to ask just a couple of questions. Is it that length of time that is the primary issue or is it the fundamental issue of allowing right of refusal?

Mr. Bouzutto,

Thank you for the question, and I appreciate your picking up that point, Madam Chairman. No one objects to the County being a buyer. I mean from an owner's point of view, the more buyers the better. The problem is that if I can take a second to describe the process.

President Praisner,

Sure.

Mr. Bouzutto,

An owner decides to sell the property. He hires a broker. It goes into the market. Thirty people look at it. Twelve submit an offer. If you then have to sit for a prolonged period with those buyers knowing that the County can come in and trump them and delay the process and then the County could somewhere along the lines say gee we've changed our mind or gee we can't finance it, that kills the whole thing. If you could shorten this, you know, I think 60 days, I think, Wayne was generous in saying 60 days but it's his money I use so who am I to complain. But I think that is the most important thing I would beg Council to understand is with the exception of the REITS, none of us building projects in this county are using our own money; I mean we use a little bit of it -- trust me, they get a little bit of it and we use our personal guarantees. But if we have a project that requires \$30 million of equity, it's coming from a bunch of teachers in New York State or it's coming from an insurance company in Connecticut. That's been my experience and I know that's been true of my (inaudible).

Councilmember Leventhal,

I did want to ask one other question, if I may.

President Praisner,

Sure.

Councilmember Leventhal,

You made another comment which is real interesting to me and I think all of us -- none of us up here are builders. We all have to get up to speed on how the real estate industry works, and we're going to be making some decisions over the next few months that are the issue of how a builder decides what type of housing to build is extremely germane and important. And you say in your testimony it will make it necessary to push the envelope on luxury on those rental units we're talking about. Now, I mean, how



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1 much room do you have to push an envelope in any direction or another. What are the  
2 factors that you consider? Okay. You're going to build multi-family housing, you've  
3 decide you're not going condo. You're building it. It's new. You're going rental. You're  
4 going to pitch it to a relatively high income, but if it were really high income it would be  
5 condo it wouldn't be rental. So tell me what is going through your mind and how much  
6 do you have leeway? My sense has been in talking to other people in the industry that  
7 conditions dictate a certain outcome and that you don't really have a lot of room. That --  
8 there's a certain number of likely tenants; you think you can build a building to meet that  
9 need; we're -- in Town Center right here in Rockville --.

10  
11 President Praisner,  
12 I would respectfully suggest that when you're talking about building as opposed to a  
13 building that you intend to sell, it's two different issues to some extent. We're talking  
14 about in this legislation tenants in a building -- an occupied building, and it's not brand  
15 new.

16  
17 Councilmember Leventhal,  
18 No but he's saying -- .

19  
20 President Praisner,  
21 His question though and his comments related to construction of buildings is really not  
22 the issue for this legislation.

23  
24 Councilmember Leventhal,  
25 But it is the issue behind his testimony. He's talking about getting financing for new  
26 construction. I understand that this legislation applies to existing apartment buildings --  
27 anything built after 1981. So it would include new apartment buildings that later -- .

28  
29 President Praisner,  
30 But it's something that exists -- this trigger and this legislation relates to something that  
31 already exists.

32  
33 Councilmember Leventhal,  
34 Madam President, I think I am correct. Because I'm understanding from Mr. Bouzzuto's  
35 testimony that his concern is that the existence of this change to law would put a chill on  
36 the construction of new rental housing because when rental housing is constructed,  
37 sometimes downstream -- .

38  
39 President Praisner,  
40 Yes, that is his testimony, but this legislation doesn't go into effect, so the question is  
41 how does this legislation affect construction issues not the whole gamut of construction  
42 issues. That was my only point. He might want to comment for (inaudible).

43  
44 Councilmember Leventhal,



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1 Okay. I'm simply trying to understand a point in his testimony, if I could complete the  
2 question.

3  
4 Mr. Bouzutto,  
5 May I try and parse this if I may. Very good.

6  
7 Councilmember Leventhal,  
8 How much leeway do you have in deciding what housing to build and how much is  
9 dictated by what you think people are out there waiting to occupy?

10  
11 Mr. Bouzutto,  
12 I would tell you the first part of that sentence in my testimony was the more important  
13 part, which is that properties that might be more moderate will not be able to go forward,  
14 will not be considered feasible because the -- the pop that comes from the sale of the  
15 property that reinforces the cash flow won't be predictable. And so the only projects that  
16 we'll get done will be the ones in places like Bethesda. A project like ours in Wheaton  
17 could very well not have gotten done.

18  
19 Councilmember Leventhal,  
20 Okay by location, I can understand that.

21  
22 Mr. Bouzutto,  
23 And it really is driven by location.

24  
25 Councilmember Leventhal,  
26 But presumably, you would be building the most profitable project anyway. I mean if you  
27 -- you're not going to build something that is for a lower-income tenant if you had the  
28 opportunity to build something that's for a higher-income tenant; you would build the  
29 most luxury apartment that you think the market will support.

30  
31 Mr. Bouzzuto,  
32 One always does, but one always builds a property that's relatively reflective of the  
33 market in which it's located. The geography location really does dictate what we do. And  
34 so what I'm suggesting is that yes, I will be able to get an apartment project approved in  
35 Bethesda.

36  
37 Councilmember Leventhal,  
38 So that's the answer, its location.

39  
40 Mr. Bouzzuto,  
41 We can go into the other question at another time. There are other things we can do to  
42 enhance it and make it more luxurious.

43  
44 Councilmember Leventhal,





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1 So your point is you would not be able to build or you would not be able to get financing  
2 in a less ritzy zip code?

3  
4 Mr. Bouzzuto,  
5 Absolutely correct.

6  
7 President Praisner,  
8 Councilmember Floreen.

9  
10 Councilmember Floreen,  
11 Never mind. George -- my questions were answered.

12  
13 President Praisner,  
14 Okay. Councilmember Elrich?

15  
16 Councilmember Elrich,  
17 Ever the skeptic. How's your POP affected because you might have to wait six months?  
18 I mean, I've been through numerous tenant conversions in Takoma Park where tenants  
19 have gone ahead and, you know, and bought the buildings. They paid the market price  
20 for the buildings. They've paid -- matched the contracts of what the owner could get in  
21 the market; so how did your POP get affected?

22  
23 Mr. Bouzzuto,  
24 The ability of the willingness of people to be buyers is severely limited by the knowledge  
25 that there is somebody with a first right of refusal, first of all. I can tell you our company  
26 has purchased 17 projects. I have lost track of the number. Something in excess of  
27 6,000 units that we, in fact, keep as affordable projects. We've not bought one in  
28 Washington, D. C. because we have not wanted to get into the mess that is created by  
29 a first right to refusal. If it was Wayne at J. P. Morgan who suggested the 60 days; if it  
30 were up to me, I would say to my friend Rick, get in line with everybody else if you want  
31 to buy and make an offer. But I understand the first right of refusal desire in the County.  
32 I also understand that it hasn't hurt older properties. But having six months for someone  
33 to sit out there will dampen the desire by other buyers to participate. And if I can do this  
34 I'd like to answer your question with a question. If I said to you, I will sell you my house,  
35 you can give me an offer, but by the way, I've got six months for my son to match your  
36 offer; would you be interested? The answer is probably not. That's as best I can do,  
37 Councilman.

38  
39 Councilmember Elrich,  
40 Except that I'm sitting as part of a government entity here that has a larger interest than  
41 my person return on things that I have to weigh.

42  
43 Mr. Bouzutto,  
44 Let me try and give you another example; the folks at -- .



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1  
2 President Praisner,  
3 (Inaudible) -- one more example because otherwise, we're going through a  
4 worksession. Why don't you ask those other questions.

5  
6 Councilmember Elrich,  
7 It's more directed towards staff, I think. One is I would like to know if we could get an  
8 analysis of what's been produced since '81 and what the rents are, because we haven't  
9 had, you know, none of this law has applied to things after 1981 other than how much  
10 affordable housing -- rental housing has been built since 1981, because it's virtually  
11 nothing. And you should have an easy time counting it. I guess my other question is I  
12 think the Council needs to look at the laws governing the organizations -- tenants'  
13 organizations because in the right of first refusal tenants have a certain amount of time  
14 to get organized. And I can tell you that if you use a 30-or-60-day timeline, you'll  
15 guarantee that unless the tenant organization has been organized prior to the moment  
16 of the opportunity of right of first refusal. No tenant organization, or very few will ever get  
17 organized in 30 or 60 days, bring in an engineer to do a preliminary analysis of the  
18 building, contract with a lawyer to help give them the appropriate legal guidance, and be  
19 in a position to make an offer. I mean you -- I can see where the government could  
20 conceivably make the decision to buy something in six months because getting an  
21 engineering evaluation and getting the proper legal advice is doable by the government;  
22 but for tenant organizations you'll guarantee that no tenant organizations can operate in  
23 that timeframe. So I think it would be useful for us to talk about, you know, what the  
24 organizational timelines are.

25  
26 President Praisner,  
27 Mr. Nelson, I'm going to let Ms. Floreen ask her question then, um, and Mr. Berliner,  
28 and then if you want to comment; but remember the worksession is coming. This isn't a  
29 worksession. Nancy.

30  
31 Councilmember Floreen,  
32 Just a question for staff; could you look into the legislative history of the current law and  
33 see if that's why that date was set to Mr. Bouzzuto's point. If that's why they picked the  
34 date as of then so as to not discourage future thinking investment; something along  
35 those lines. There might be some legislative history on the subject.

36  
37 President Praisner,  
38 Councilmember Berliner.

39  
40 Councilmember Berliner,  
41 Hey, I did it.

42  
43 President Praisner,  
44 Yeah, good.



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Councilmember Berliner,

I also just have a clarification -- request for clarification because I was a little confused by the conversation and your testimony as it relates to whether or not this legislation is applicable to new buildings. So my understanding from this was that it was only applicable to existing buildings; is that correct?

Unidentified,

That's correct, but I also (inaudible) arguments we made about how the text (inaudible).

Unidentified,

(Inaudible) unless you put a date on (inaudible).

Councilmember Berliner,

I'm sorry. That makes the distinction between new and existing meaningless.

Councilmember Leventhal,

But what is the answer. Does this still apply to a building built next year?

Councilmember Berliner,

It does not.

Unidentified,

(Inaudible).

President Praisner,

It applies to a building being sold, not a building being sold -- at its sale not at its building.

Unidentified,

Correct.

Councilmember Leventhal,

Okay if a rental building is built next year and then three years later it's converted to condo, does this law apply?

Unidentified,

Yes.

Councilmember Floreen,

Yes.

Unidentified,

Yes, it does.



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1 Councilmember Berliner,  
2 Okay fine, thank you.

3  
4 President Praisner,  
5 But it's at the sale of the building, not at the construction of the building. That's the point  
6 I'm trying to make. Vice President Knapp?

7  
8 Vice President Knapp,  
9 Thank you, Madam President. I'll be very brief. I think that Mr. Bouzutto has raised  
10 some very interesting points I think need to be taken into consideration. Often times  
11 when we get to worksessions or when we get to full Council, we tend to just have our  
12 staff available and to the extent that the perspective that you represent could somehow  
13 be brought to bear during the course of our discussion I think would be very helpful, and  
14 so I don't know the best way to do that but I would just -- .

15  
16 President Praisner,  
17 I've already asked Ioba (inaudible) to be present at the committee worksession, and I  
18 believe they will be there.

19  
20 Vice President Knapp,  
21 Okay. Great. Thank you.

22  
23 Councilmember Elrich,  
24 Madam Chair?

25  
26 President Praisner,  
27 Yes, Mr. Elrich.

28  
29 Councilmember Elrich,  
30 If that's the case, could representatives of tenant groups also be represented?

31  
32 President Praisner,  
33 Anyone who can come. The point I'm making though is they have information to  
34 provide. If there is a tenant organization that wants to contact us, they certainly can. I'm  
35 not going to open up to the public committee worksession to anyone and everyone, but  
36 if there is an organization that would like to comment or someone that would like to  
37 communicate with me, we can discuss whether that -- how that information can be  
38 provided. Okay. I see no other testimony and no other comments, so -- oh.

39  
40 Mr. Nelson,  
41 You were going to let me make a comment.

42  
43 President Praisner,



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1 Oh, I'm sorry, Rick. You're correct. I apologize. I also mentioned the worksession  
2 please; this is an (inaudible).

3  
4 Mr. Nelson,

5 I understand and I reserve most of my comments for the worksession. I just -- two  
6 comments that I think really ought to be made right here is that since 1981 we had pad  
7 this, I mentioned how we've used it judiciously. I think HOC and the County -- and I can  
8 speak at least from 15 years of experience with HOC -- when we decided to exercise  
9 that right, the right was in fact exercised up front, quickly, and you didn't wait six months  
10 for them to have to suffer through all of those pains and agonies. I think the other issue  
11 is that the contract that we get or the offer that we get has a contract behind it. That  
12 contract in itself in many cases -- in most cases has a due diligence period. That is also  
13 going to hold up that money for six months so that whether it's HOC or the County going  
14 through due diligence or the private buyer going through the due diligence, there is still  
15 a significant time period that is going to be (inaudible).

16  
17 President Praisner,

18 Gentlemen, this is a worksession conversation now completely. I'm sorry. The hearing is  
19 closed. Good afternoon, ladies and gentlemen, this is a -- no. I asked loba if they  
20 wanted to testify, and they said Mr. Bouzutto would testify. You can come -- no, I asked  
21 you if you wanted to testify, Lisa.

22  
23 Unidentified,  
24 (Inaudible).

25  
26 President Praisner,

27 Well, yeah, and I called the five people, and they weren't present. You weren't on the  
28 list, Lisa. I'm sorry. This is a public hearing on a Supplemental Appropriation to the  
29 FY07 Operating Budget of the Department of Public Works and Transportation in the  
30 amount of \$9,656,890 for snow removal, wind, and rainstorm clean up. Action is  
31 scheduled following the hearing. If folks could please take the conversation outside, I'd  
32 appreciate it. Before beginning your presentation, please state your name clearly for the  
33 record. There are no speakers for this hearing, and it is before the Council for  
34 consideration. Is there a motion? Mr. Orlin, you had a comment you wanted to make.

35  
36 Mr. Orlin,

37 Yeah, I want to have one correction otherwise Harold Adams is waiting.

38  
39 President Praisner,

40 I'm sorry. Folks, can you please take your conversation to the hall?

41  
42 Mr. Orlin,

43 I'll speak louder. The request is for \$9,656,890. The amount -- the reason why it went to  
44 that amount is because part of the money for this exercise had been budgeted. What I



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1 said in the packet on the second paragraph near the bottom is that DPWT has  
2 experienced cost savings of about \$2.5; that's not true. What is really happening is that  
3 the Executive Branch and the General Fund is going to make up that difference in the  
4 end of year reserve.

5  
6 President Praisner,  
7 So the total cost is greater -- is more than the appropriation, but those funds have been  
8 found elsewhere in the Executive Branch.

9  
10 Mr. Orlin,  
11 They will be found elsewhere.

12  
13 President Praisner,  
14 Okay. Is there a motion for Council adoption?

15  
16 Councilmember Ervin,  
17 Move approval.

18  
19 President Praisner,  
20 Ms. Ervin. Is there a second?

21  
22 Councilmember Floreen,  
23 Second.

24  
25 President Praisner,  
26 Councilmember Floreen. All in favor of approving the appropriation?

27  
28 Unidentified,  
29 She just wants to show she's really (inaudible).

30  
31 President Praisner,  
32 It's unanimous. Mrs. Floreen, you're voting, I assume. Nancy, are you voting. That's  
33 unanimous. Next item. Good afternoon, ladies and gentlemen, this is a public hearing  
34 on a Special Appropriation FY07 Capital Budget of the Maryland National Capital Park  
35 and Planning Commission in the amount of \$299,000 for Planned Lifecycle Asset  
36 Replacement Local Parks. Action is scheduled following the hearing. And there are no  
37 speakers for this hearing. Is there a motion?

38  
39 Councilmember Leventhal,  
40 Move approval.

41  
42 President Praisner,  
43 Councilmember Leventhal, second Councilmember Trachtenberg. All in favor? Unanimous.  
44 Thank you. Good afternoon, ladies and gentlemen -- no, this is the last hearing is this evening's



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1 hearing by the Transportation and Environment Committee on the Water and Supply System. We  
2 are -- .  
3